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# The Collection of Hindu Law Texts

Vol. II. Part III.

## YÂJÑAVALKYA SMṚTI

WITH THE COMMENTARIES OF

(1) The MITÂKṢHARÂ by Vijñanes'vara Bhikṣhu

(2) The VIRAMITRODAYA by Mitramis'ra

AND

(3) The DĪPAKALĪKÂ by S'ûlapâṇi

Vyawahârâdhyâya.

Chapters I-VII ( Pages 631-976 )

*An English Translation with notes, explanations etc.*

BY

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Second Edition

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1938.

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Printed by S. V. Parulekar, at the Bombay Vajbhav Press, Servants  
of India Society's Home, Sandhurst Road, Girgaum, Bombay

and

Published by V. J. Gharpure, at the office of  
The Collection of Hindu Law Texts, Girgaon, Bombay.

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*Sole Agents for India & Foreign Countries.*

Messrs. B. V & Co.,

Book-Agents & Publishers,

Girgaon, Bombay (4).

## PREFACE.

As announced last year when the second part of the *Achārādhyāya* was published, the first part of the *Vyawahārādhyāya* is now being issued. This portion consists of Chapters I-VII which give the General and Special Rules of Procedure, the laws of Debt, Pledges, and Deposits, and the provisions as to Witnesses, Documents, and Ordeals. It will thus be seen that the portion now issued in this Part consists of the Procedure or the Adjective law of the *Smṛti*. The next Part which will consist of Chapters VIII-XXV contains the Substantive portion of the *Smṛti*.

As announced before, the translation now issued consists of

- (1) The Original *Smṛti* of Yājñavalkya.
- (2) The commentary called the *Mitākṣharā* by Vijñāneśvara.
- (3) „ „ „ *Viramitrodaya* by Mitramiśra and
- (4) „ „ „ *Dīpakalikā* by S'ūlapāṇi.

In the First Edition which was issued in 1914, only the *Smṛti* of Yājñavalkya and the *Mitākṣharā* were included in the translation.

The two commentaries of the *Viramitrodaya* and the *Dīpakalikā* were subsequently secured from the Library of the India Office. The commentary of the *Viramitrodaya* has also been published in the Choukhamba Sanskrit Series of Benares and the *Dīpakalikā* is being published in entirety in this Series. It will be remembered that the translation is being issued in handy volumes of about 400 pages for the convenience of subscribers.

The Second Part of the *Smṛtimuktāphalam* by Śrī Vaidyanāthe-Dikṣita is also being sent out along with this volume.

The next instalment will consist of:

(1) *The English Translation* of the remaining portion of the *Vyawahārādhyāya* of the Yājñavalkya *Smṛti*, with the three Commentaries.

(2) *The Sanskrit Text* of the *Dīpakalikā* by S'ūlapāṇi.

The assistance of my son Bal has, as usual, been of much use.

Girgaon, Bombay. }  
15th March 1938 } .

J. R. GHARPURE.  
Editor.



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S'RĪ  
YĀJÑAVALKYA-SMṚTI  
TOGETHER WITH THE COMMENTARY CALLED  
MĪTĀKṢHARĀ  
OF  
S'RĪ VIJÑĀNES'WARA  
AND THE COMMENTARIES  
OF  
VIRAMITRODAYA BY MĪTRĀMIS'RĀ  
AND  
DĪPAKALIKĀ BY S'ŪLAPĀNI

SECOND BOOK

ON VYAWAHĀRA: POSITIVE LAW.

Chapter I.

OF THE RULES OF PROCEDURE IN GENERAL.

Introductory.

Of a king possessing the (necessary) qualifications of anointment &c. the protection of the subjects is the highest duty; that, (i. e. the protection) however, is not possible without punishing the guilty. The detection of the guilty, moreover, is not possible without the administration of justice (Lit. holding a trial). That suits should be tried daily has already been said<sup>1</sup> viz. that "a king should attend personally to the administration of justice every day, surrounded by (or with the help of) the Councillors." The various details of a trial viz. its nature, its kinds, and its procedure have, however, not been described, and the Second Book is being commenced for describing these. 10

Yājñavalkya, Verse 1.

The king, divested of anger and avarice, should administer justice along with learned Brāhmaṇas, in conformity with the principles of legal science.

1. Āchārādhyāya Verse 360.



Vyavahāra  
defined.

person says that the land &c. is his, and any other  
also says in contradiction to him, that it is his.

The Author indicates its *i. e.* of the *Vyavahāra*-  
variety by the (use of the) plural. By the word *nṛpa*, *i. e.* king, the  
Author indicates that this is not the duty of the *kṣatriya* order alone,  
but also of any other endowed with the authority to govern the subjects.  
*Pasyêt—should administer*, &c. is a repetition (by way of corroboration)  
of what was said before and is intended as laying down a  
special duty. *Vidvadbhiḥ, along with the learned*,—with (the

Brāhmanāḥ.

help of) those (who are) well-versed in works on  
legal science and the *Vedas*, grammar &c.

*Brāhmanaiḥ, with Brāhmanas*,—not *Kṣatriyas*  
or others. By the expression, '*Brāhmanas*' introduced by the Instru-  
mental case, their subordination is indicated, from the grammatical  
aphorism<sup>1</sup> 'conjunctive use with *Saha* (the preposition *with*) indicates  
subordination.'

Hence, in the case of absence of an investigation, or for a false  
decision, the fault would be that of the king, and not of the *Brāhmanas*.  
As observes Manu:<sup>2</sup>—"A king, punishing the innocent (Lit. unpun-  
ishable), and not punishing the guilty (Lit. deserving punishment),  
brings great infamy on himself and goes to hell". By what procedure  
(should he try suits)? *dharmaśāstrānūsāreṇa*, in conformity  
with *Dharma-S'āstra*<sup>3</sup> (Science of religion and law) and not with the  
science of politics. The established usage and law of the country &c.  
have not been separately mentioned, as they form a part of the subject  
matter of legal science, in so far as they (such usage and law) are not  
inconsistent with the general principles of legal science. And as the  
sage Yājñavalkya has said<sup>4</sup> later on, "a custom which is not  
opposed to law should be carefully maintained, as also the law or  
usage made or established by the king". *Krōdha-lōbha-vivar-  
jitah; &c., divested of anger and avarice &c.* When it is  
established that it (*i. e.* the administration of justice) should be in

1. Pāṇini. II, 3-19. (सह्युक्तेऽपने ।)

2. Ch. VIII. 128.

3. For the extent and scope of the expression *Dharma-S'āstra* see the  
General Note on the Hindu Law Texts.

4. Bk. II. 186.

conformity with the principles of legal science, the mention of the additional condition (that the king should be) "divested of anger and avarice" is indicative of a special injunction (आदरार्थम्) Krôdha anger—intolerance. Lôbha avarice—excess of greed. (1).—

### 5 Viramitrodaya.

"The judicial proceedings, he himself should investigate, surrounded by the councillors, every day", what has been thus stated in the last Book, the Author now elaborates in detail by a separate Book.

### Yājñavalkya, Verse, 1.

10 Here, although the investigation of a judicial trial has been stated in the last Book, still a judicial trial with all its parts being set out in this Book only, it is called the Book on Vyavahāra. There, moreover, these are the Chapters: viz.

- |    |   |   |
|----|---|---|
| 15 | I. Chapter on the Rules of Judicial Procedure. Verses 1-36.             | XIII. Breach of Contract of service. 182-184. |
|    | II. Payment of Debts—Verses 37-64.                                      | XIV. Breach: of Contract. 185-192.            |
| 20 | III. Deposits. Verses 65-67.  | XV. Non-payment of Wages. 193-198.            |
|    | IV. Witnesses. Verses 68-83.  | XVI. Gambling and Betting. 199-203.           |
|    | V. Documents. 84-94.  | XVII. Stealer and Abnās. 204-211.             |
| 25 | VI. Ordeals. 95-113.  | XVIII. Assault. 212-220.                      |
|    | VII. Partition of Daya. Verses. 114-149.                                | XIX. Sāhasas. 230-233.                        |
|    | VIII. Boundary Disputes 150-158.  | XX. Non-delivery after Sale. 254-258.         |
| 30 | IX. Disputes between the owners and keepers (of cattle) Verses 159-167. | XXI. Partnership. 259-265.                    |
|    | X. Sale without ownership. Verses. 168-174.                             | XXII. Theft. 266-282.                         |
| 33 | XI. Non-completion of gifts. Verses 175-176.                            | XXIII. Protection of Women. 283-294.          |
|    | XII. Rescission of a Sale. 177-181                                      | XXIV. Miscellaneous. 295-307                  |

1. The meaning is that the king is asked by the general law that he should administer justice according to religion and law, but in particular he is asked to cast off all anger and avarice.

2. See verse 360 Achāradyāya p. 629 above.

3. Viśvarupa makes it further clear: एकस्मिन् दिव्यवह्नास्य रक्षणीयविशेषादेश्वा बहुवचनम् । यथाह मनुः 'नेषामपमृणादानम्'—आरद्व्य 'चतुष्पादश्चतुर्थापी'—



*Vidvadbhi*, 'along with the learned', i.e., men well conversant with the principles of legal science; *brāhmaṇaiḥ*, 'with the Brāhmaṇas'; *saha*, 'along with'; *nṛpaḥ*, 'the king'; from anger and avarice being particularly averse; *Dharmaśāstrānusāreṇa*, 'in conformity with i.e., without detriment, to Dharma and Śāstra', "Dressed in decent attire, the king after going to the court house, with close attention, being seated with face towards the East, should investigate the cases of suitors" in this and the like manner, suits containing the plaint and the answer, *pas'yet*, 'should administer', i.e., should investigate. 5

By the word *nṛpa*<sup>2</sup> is included one even other than a Kshatriya, 10 who is a protector of subjects. *Brāhmaṇaiḥ* is the principal course. If that is not possible, then along with *Kshatriyas* or *Vaiśyas* also, as has been stated before.<sup>3</sup> The particular mention of *Dharmaśāstra* is with a view to point out its chief importance; for in the investigation, the science of polity may also have to be followed. That has been stated 15 by Kātyāyana<sup>4</sup>: "By those experts in the *Dharmaśāstra* and versed in *Arthaśāstra*". On a conflict between the *Dharmaśāstra* and the *Arthaśāstra*, however, the greater or less potentiality will be stated later on.

As to the etymology of *Vyavahāra*, Kātyāyana<sup>5</sup> says: "Vi, has the sense of many; *ava*, means doubt, *haraṇa* or removal is expressed by *hāra*; 20 by reason of the removal of several doubts, it is known as *Vyavahāra*."

That, moreover, of this character is of two sorts. As says Nārada<sup>6</sup>: "Attended by a wager, and not attended by a wager; this should be known to be of two kinds. It is 'attended by a wager' where a party takes in writing a certain sum which has to be paid besides that in 25 dispute." "He who is defeated in this proceeding, shall pay so much

1. See Kātyāyana Verse, 55.

2. i.e. who occupies the position of a Ruler of the people.

3. See Page 621 lines 14-21.

4. Verse 57. By adopting this quotation from Kātyāyana, it is indicated that the study of the principles of Political science was a necessary part of the accomplishment of one to be appointed to investigate cases.

5. Verse 26.

6. Introduction 4. With this aspect of a suit the student may with advantage compare the *Actio Sacramentum* of the Roman Law. The two resemble in both aspects.

penalty to the successful party or to the king<sup>6</sup> is this or a similar form where a condition or wager like this is laid before the writing down of the Plaint, that is 'a suit with a wager'; one other than this is 'a suit without a wager'.

- 5 It has been stated: 'in accordance with the *Dharma S'āstra*'; there, the Author mentions the position of the *Dharma S'āstra*, i.e., by reference to the entire treatise. Thus indeed becomes congruous the mention hereafter of the witnesses, disputants, &c., since these are incorporated into the *Dharma S'āstra*. (1).

10

## S'nlapāṇi

- In regard to the Recovery of Debts and several other titles at Law such doubts as arise are removed by this, and therefore, this deliberation which removes doubts as to the several points is called *Vyavahāra* or a Judicial proceeding. So *Kātyāyana*:<sup>1</sup> 'Vi, has the sense of men; ;  
15 ara, means doubt; *haraṇa* or removal is expressed by *hāra*; by reason of the removal of several doubts, it is known as *Vyavahāra*.' Tān, these judicial proceedings, the Lord of the land, should himself personally investigate, and in company with the Brāhmanas knowing the *Dharma-  
20 śūtra*. In accordance with the rules of the *Dharmaśūtra* regarding the Plaint, the Answer, the Proof, the Trial and the Decision, and not through anger, or hatred, nor through avarice, nor by partiality. Although it has been said that the king should himself investigate<sup>2</sup> judicial proceedings, still this is a subsidiary<sup>3</sup> condition of the principal point viz. investigation according to the principles of *Dharma Śūtra*. (1)

25

## Yājñavalkya, Verse 2.

A king should select as his Councillors<sup>4</sup> those persons who have become accomplished by learning and study<sup>5</sup>, who know the law, who speak the truth, and who are the same<sup>6</sup> to friends and foes alike. (2).

1. Verse 26.

2. Verse 350. विवेक—The use of this expression has the sense of investigation carried to a decision.

3. धर्मशास्त्रविदो ह्यन विद्वानर्थमयमवृत्तः—गुण and अवृत्त—The principal of the chief point is गुण, and the subsidiary or subordinate one is अवृत्त.

4. The words Councillors and Assessors are separately used here to bring out the distinction between नियुक्त (appointed) and अनियुक्त (not appointed). The word नियुक्त stands for those who are appointed, and has been translated as Councillors. The word Assessors refers to those learned Brāhmanas who voluntarily go to a court and are referred to in verse 1, above. Cf. the Judges, and the Recuperators of the Roman system.

5. i. e. of the Vedās.

6. Impartial to friends and foes as well.

Mitākṣharā.—Further, S'rutēna, by learning, by studying the *Mīmāṃsā* (the science of Interpretation),

Page 2.

Grammar etc; and also *adhyayanēna*, by study, i. e. the study of the Vedās; *sampannāḥ*, accom-

plished; *dharmajñyāḥ*, knowing the religion, i. e. those who know religion and the science of law; *satyawādināḥ*, who speak the truth, i. e. who have (established) a character for speaking the truth.

*Ripau mitre cha ye samāḥ*, same to friends

*Sabhyas* (Coun- and foes alike, unaffected by feelings of hatred, cillors) described. love &c. Men of this description should be invested

ns *conncillors* by the king, after conferring upon them gifts, and other tokens indicative of respect, that they may (become fit to) attend or sit in the meeting or assembly, *sabhāsadaḥ*.

Although the expression 'accomplished by learning and study' has been used without particularisation, still *Brāhmaṇas only* (are meant). As says *Kātyāyana*<sup>1</sup>:—"Moreover, he (i. e. the king), accompanied by assessors or councillors, who are steady, special scholars, of high parentage, and who are the best of *Brāhmaṇas*, who are clever in interpreting the meaning of *Dharma S'āstra*, and who are accomplished in politics."

Those to be selected, moreover, should be three, the plural having been used with a (special) purpose; and also there being a text of *Manu*<sup>2</sup> viz:—"In the place where three *Brāhmaṇas*, versed in the Vedās, sit down." *Bṛhaspati*<sup>3</sup>, however, intimating that the councillors should be seven, five, or three, observes: "Where, *Viprās* (*Brāhmaṇas*) knowing the usage of the people and the Vedās, as well as the law, and being either seven, five, or even three, are sitting, that assembly is equal (in Sanctity) to a sacrificial assembly". It should not, moreover, be supposed that (the words) "accomplished by learning and study" and others, are adjectival of *Brāhmaṇas* referred to in the last verse in (the expression) "along with *Brāhmaṇas*," it being impossible that words having the Nominative and the Instrumental termination at their end, should be connected as an adjective and the word qualified (by it), as also on account of the possibility of the fault of repetition being committed by the use of the expression "by the learned".

1. Verse 57.

2. Ch. VIII, 11.

3. Ch. I. Verse 11.

Moreover, Kātyāyana<sup>1</sup> has brought out clearly the distinction between the Brāhmanas and the Councillors thus:—"A king attains heaven, who investigates disputes according to law, with the help of the Chief Judge, the minister, the religious preceptor, the Brāhmanas, and the Councillors." There, the distinction is that the Brāhmanas are not appointed, while the Councillors are appointed. Hence also it is said<sup>2</sup> "whether appointed or not appointed, he who knows the law is entitled to speak".

Among these, those who are appointed should advise the king on the facts as they stand, and if he would act otherwise, then they should dissuade him, otherwise they would be guilty. Kātyāyana<sup>3</sup> has also said:—"The councillors who follow him, even when he acts with injustice, are co-sharers with him in it (the injustice); therefore the king should be warned (advised) by them." Of the unappointed, however, the sin occurs only when they speak a falsehood, or do not speak at all; not when they do not dissuade the king. As Manu<sup>4</sup> has said:—"Either the court must not be entered, or the truth must be spoken; a man who either speaks nothing, or speaks falsely becomes sinful (guilty)." Ripau Mitre Chêti, to friends and foes, &c., in this clause by the (use of the) word *cha* is indicated that the court should also have the attendance of a few merchants for the satisfaction of the people. As says Kātyāyana<sup>5</sup>: "Attended by a few tradesmen of good family, free from malice, and possessing the qualification of high birth, character, age, good behaviour, affluence, and family tradition." (2).

#### Viramitrodaya.

There, moreover first, in regard to the statement "along with learned Brāhmanas" while explaining the learning, the Author discusses the Brāhmanas

#### Yājñavalkya, Verse 2.

*S'rutam*, 'learning', i.e., with the help of the Mimāṃsā and the like, understanding the meaning; accompanied by that, with the study of the *Veda* and *Sāstra*, accomplished, i.e., possessed. Therefore also *dharma-jñādh*, 'who know the law', i.e., who are clever in discriminating the *dharma* and the non-*dharma*; and therefore also who have a character for truth-speaking. *Ye ripau mitre cha samdh*, 'who are the same to foes and friends alike' devoid of hatred, anger, etc., those

1. Verse 56, see note 4 on p. 836

2. By Nārada. III, 11.

3. Verse 75.

4. Ch. VIII. 13.

5. Verse 58.

Brāhmaṇas should by the king be made councillors, i.e., who will attend the courts. The meaning is that honour and respect, etc., should be so ordained for them that they may attend the court for the deliberations. By the use of word *cha*, 'and', are included the indifferent.

By the use of the plural number, the Author intends the particular number stated in other Smṛtis. So, moreover, Manu<sup>1</sup>: "In the place where sit down three Brāhmaṇas knowing the Vedas." Bṛhaspati<sup>2</sup> also: "seven, five, or three may be the Councillors." Really, however, the inclusion of the unappointed Brāhmaṇas having been stated before, even apart from those, this verse is intended to direct others to be made councillors. Hence it is that the Chief Justice, and the ministers, together with the Brāhmaṇas and the Purohitas have been stated by Kātyāyana<sup>3</sup>. After premising the investiture, it has been stated: "Attended by a few merchants of good family, possessing the qualifications of high birth, character, age, good behaviour and affluence, and free from malice." By Manu<sup>4</sup> also has been said:—"In transactions between tradesmen and artificers, and also among persons subsisting on agriculture, or on the stage, where a decision is impossible to be reached, it should be got done by the experts in the lines themselves." This is only indicative. The point is that whoever is a specialist in a particular matter, by him indeed that matter should be got decided.

Bṛhaspati<sup>5</sup> mentions persons necessary for (a court of) justice: "The king should appoint two persons—an accountant, and a scribe—who know the principles of the science of words and names, have studied the lexicons, who are skillful accountants, who are pure, and who are acquainted with the various alphabets. For summoning and guarding the witnesses, the plaintiff, and the defendant, a truthful and confidential man should be appointed, subject to the authority of the Councillors." (2)

### Sūlapāpi

The Author mentions the councillors

Yājñavalkya, Verse 2.

Accomplished with the knowledge and the meaning of the Vedas, and the study of the Vedas; who know the *Dharma śāstra*; and who by habit

1. Ch. VIII. 11.

2. Ch. I. Verse 11.

3. Verses 58.

4. This verse is not found in Manu; see however Bṛhaspati I. 26.

See Raghunathji Tarachand vs. Bank of Bombay I. L., R. 34 Bom. 72, at p. 78.

5. Ch. I. Verses 14, 15.

6. सभापतिः

are truth-speakers; those who are of an even mind towards an enemy as also to a friend; such should be appointed councillors.

5 Kātyāyana<sup>1</sup> states a special rule: "He, moreover, accompanied by councillors, who are steady, special scholars, of high parentage, and who are the best of Brāhmanas, who are experts in the *Dharma Śāstra*, and are accomplished in the science of polity; along with the chief judge, the minister, the religious preceptor, the Brāhmanas, and the councillors, the king who investigates disputes, attains heaven, and retains it according to Dharma." (2)

10 It has been laid down that 'the king should administer justice'; the Author mentions a secondary course

### Yājñavalkya, Verse 3.

15 Unable to attend to the administration of justice on account of other engagements, by a king should be appointed (in his place) to work along with the Councillors, a Brāhmaṇa, knowing all laws.

20 Mitākṣharā :—On account of his being engrossed in other works, *vyawahārān apas'yatā*, unable to attend to the administration of justice; *nṛpeṇa*, by a king; *sabhyaiḥ saha*, along with the Councillors, referred to above, *sarvadharmavit*, knowing all laws, all laws i. e. laws laid down in the *Śāstrās*, as also the customary laws; knows i. e. (considers) discriminates; such a one is he who knows all laws; Brāhmaṇa, a Brāhmaṇa, and not a *kṣatriya* or any other; *niyoktawyaḥ*, should be appointed, for deciding disputes.

25 Moreover, such a one possessing the particular qualities laid down by Kātyāyana<sup>2</sup> should be made. Says he :—"He should be self-restrained<sup>3</sup>, high-born, impartial, not overawing, calm, god-fearing, religious, and devoid of anger."

1. Verses 57, 58.

2. See Verse 64.

3. *अमल*. The other reading is *अव* vigilant.

In the absence of a *Brāhmaṇa* of this description, he should appoint a *Kṣatriya*, or a *Vaiśya*, but not a *Sūdra*. As says *Kātyāyana*<sup>1</sup>:—"Where a *Brāhmaṇa* is not available, he (*i. e.* the king) should appoint a *Kṣatriya*, or a *Vaiśya* who knows the *Dharma S'āstra*; a *Sūdra* should be avoided by all means." 5

By *Nārada*<sup>2</sup> also this very thing has been indicated prominently:—"Placing before him *Dharma-S'āstra*, and adhering to the opinion of the Chief Judge, with a calm mind (or concentrated attention), he should decide suits in due order." 'Adhering to the opinion of the Chief Judge, *i. e.* not posting himself in his own opinion. (As in the expression, 'the king observes the enemies' army with the eyes (in the form) of spies', the term Chief Judge is here used in its etymological sense. He who questions the plaintiff and the defendant is a *prāt*; and he who sifts or discriminates their statements, the inconsistent from the consistent along with the assessors, a *vivāka*; he who is a *prāt* as well as a *vivāka* is a *Prādvivāka*. Moreover, it has been said:<sup>3</sup> "He is called *Prādvivāka*, because, after consulting him, the king, in company with the councillors, decides disputes after an inquiry relevant to the matter at issue." (3) 10 15 20

### Viramitrodaya.

"Judicial proceedings he should himself personally investigate" thus it has been stated in the last book. When, however, that is not possible, the Author mentions a conree 25

### Yājñavalkya, Verses 3.

Owing to being absorbed in concentrating himself upon other matters and therefore unable to investigate judicial proceedings, by such a king, along with the councillors, a *Brāhmaṇa* knowing all laws and rules useful for a lawsuit should be appointed for the purpose of investigating law suits. This is the meaning. Here *Kātyāyana*<sup>4</sup> states a 30

1. Verse 67.

2. Ch. I. 35.

3. By Vyāsa. See *Smṛti Chhandrikā*, P. 17, I, 3.

4. Verse 64.

special rule. "One who is self-controlled, well-born, impartial, not likely to create distrust, who is firm, afraid of the next world, devoted to religion, industrious, and devoid of anger." In the absence of such a Brāhmaṇa, a Kshatriya, or a Vaiśya should be appointed, as has been stated above.

- 5 So says Nārada<sup>1</sup>: "The affairs of the ascetics should be got determined by only those who are learned in the three lores, as also of those who are versed in sorcery and witch-craft; and not himself, for fear of creating resentment." The meaning is that those from whose anger there may occur danger, the investigation of (the  
10 disputes of) these should be caused to be made through men of their kind alone.

- Even when a determination is made by himself, the co-operation of the Chief Judge is certainly contemplated. So observes Nārada<sup>2</sup>: "Placing before him the *Dharma-Sāstra*, and adhering to the opinion  
15 of the Chief Judge, he should decide suits in due order, with a calm, i.e., concentrated mind." (3).

### S'ulapāṇi.

When the investigation of disputes is not possible to be made by himself personally, the Author states a course

- 20 Yājñavalkya, Verse 3.

- One knowing well all laws i. e. of the country, the caste, and the rest. In the absence of a proper Brāhmaṇa, a Kshatriya, or a Vaiśya may even be appointed, as says Kātyāyana<sup>3</sup>: "If a learned Brāhmaṇa be not available, one may appoint there a Kshatriya, or a Vaiśya who  
25 knows the Dharma śāstra; a śūdra, one should avoid with effort." So also Manu<sup>4</sup>: "A Brāhmaṇa who subsists only by the name of his caste (*jāti*), or one who merely calls himself a Brāhmaṇa, may interpret the law of the king, but never a Śūdra. Of that king the administration of whose laws is made by a Śūdra, the kingdom will sink  
30 (low) like a cow in the mud." (3)

1. Not found in Nārada, but see Bṛhaspati, I. 27.

2. Ch. I. 35.

3. Verse 67.

4. Ch. VIII, 20-21.



The Chief Judge and the other councillors if out of passion &c. decide a dispute in departure from the dictates of the Smṛti, then what should a king do? so the Author says

### Yājñavalkya, Verse 4

4. Out of passion, avarice, or even through fear, 5  
councillors acting in departure from the rules of the Smṛtis  
or from a similar cause, should each be separately punished  
with a fine double of that in dispute.

Mitākṣharā:—Moreover, the aforesaid Sabhyāḥ, councillors, 10  
on account of the uncontrolled sway of *Rajas*<sup>1</sup> or passion, being  
affected by it, *rāgāt*, out of passion, i.e., on account of excessive attach-  
ment; *lobhāt*, from avarice, i.e., on account of excess in greed; *bhayāt*,  
from fear, or on account of excessive tribulation, *smṛtyapetam*, in  
departure from the Smṛtis i.e. opposed to the Smṛtis. The term *Ādi*  
or from a similar cause, indicates doing something which is a 15  
deviation from custom; *prthak prthak*, severally, each one severally.  
*Vivādāt*, of that in dispute, of the amount accruing as damages on  
account of a defeat in the suit, should be punished with a double  
of the fine, *dwigūṇam damam*; not however (double) of the amount 20  
which is the subject matter of dispute. If it were so, there would  
be the possibility of an absence of fine in disputes regarding  
adultery or seduction and the like. The use of the words passion,  
avarice and fear is to limit the double fine to (the cases of) passion  
&c. only, and not to (extend it to the case of) ignorance, mistake &c.

Moreover, let it not be supposed in consequence of the 25  
text of Gautama<sup>2</sup> viz. "a king has power  
\* [P. 3. L. 16.] over all, excepting Brāhmanas," that *Brāhmanas*,  
are exempt from punishment, as the text is  
intended to be eulogistic only.

As to what has been said<sup>3</sup> viz., 'that he (i.e. a *Brāhmaṇa*, 30  
should be exempted by the king from six (punishments), viz. that  
he should not be killed, imprisoned, punished, exiled, deported or

1. The second of the three qualities viz. *Satva*, *Rajas* and *Tamas*;

2. Gautama II, 1.

3. Gautama VIII. 12, 13.

made destitute (deprived of his effects),<sup>1</sup> that holds in the case of one<sup>2</sup> "who is a well-read scholar, one who knows the usages of the people, who is versed in the Vedas and the Vedāṅgas, who is an expert in the art of controversy (or in expounding controversial points), in History and the Pūrāṇas, who is a constant student of the same, and who follows them in life, who is purified by the forty-eight purificatory ceremonies,<sup>3</sup> who devoutly observes the three duties<sup>4</sup>, or one who has been trained in the six<sup>5</sup> customary duties of life." Thus it (*i.e.* the exemption) applies only to one who has acquired a versatility of knowledge as detailed above and not to any Brāhmaṇ merely as such. (4)

### Vīramitrodaya.

For the Councillors giving an unjust decision, punishment should be administered by the King; so the Author says

16 Yājñavalkya, Verse 4.

On account of being oppressed by passion, etc., in departure from the *Smṛtis*, *i.e.*, opposed to the *Smṛtis*—by the use of the word *ādī*, etc., 'opposed to the usage of the country' &c. also should be included. *Sabhyāḥ*, 'Councillors', for the purpose of investigation appointed to the assembly, as far as the Chief Judge, *prthak prthak*, 'separately' each one, *ciddāt*, 'of that in dispute, consequent upon a defeat in the dispute under consideration, from the penalty in the form of an imposition of a money fine, *dwiguṇam damam*, 'double the penalty', *daṇḍyāḥ*, 'should be punished', *i.e.*, should be made to pay.

25 By the use of the word *api*, 'or also', are included those not known. So says Kātyāyana: "After correctly comprehending the result of the suit, the Councillor should then speak; otherwise one must not speak; he who speaks gets twice the penalty. By reason of the

1. Gautama VIII. 4-11.

2. *viz.* Gautama details these at Ch. VIII. 14-22.

3. These are: study, sacrifice, and almsgiving (अध्यापनेज्यादानानि).

4. These are: the three last with the addition of अध्यापनयाजनप्रतिग्रहाः Teaching, officiating at a sacrifice, and receiving gifts. See Yājñavalkya I. 118.

5. Verse 80-81.

fault of the Councillor, whatever is lost, should be replaced by the Councillor as it was before; a dispute, however, when settled by the disputants themselves, one should not investigate."

Thus what has been decided after a proper deliberation may be considered again, and no penalty (should be imposed) on of irritation 5  
due to the defeat of the plaintiff.

There, "Councillors declaring an unjust decision, and similarly those who subsist on bribes, as also those who are guilty of a Breach of Trust, all these must certainly be banished", the (rule of) punishment thus declared by Bṛhaspati should be observed. (4). 10

### S'ulpapi

#### Yājñavalkya, Verse 4.

These, the councillors declaring falsely, should each be punished with the penalty double that for the defeated party. By the use of the word *api* 'even' is included one digressing away from the judicial 15  
proceeding (4).

The Author mentions the nature of a Vyavahāra

#### Yājñavalkya, Verse 5.

If one injured by others in a way which is a violation of the (laws of) Smṛtis and usage, informs the king, that 20  
becomes a (fit) subject for a Judicial Proceeding. (5)

Mītākṣharā :—Mārgēṇa, in a way, opposed to legal science and general usage, paraiḥ, by others,

Subject-Matter of a suit. ādharshitah, injured, i.e. attacked; which, rājñe, to the king, or to the Chief Judge, āvedayati, 25  
informs, i.e. respectfully complains, Chet, in case,

of that, tad, which forms the complaint, is the subject matter of a judicial proceeding, Vyavahārapadam. Vyavahāra or a judicial proceeding is that which has for its component parts, the plaint, the answer, the doubt, reasons, deductions, the evidence, the decision 30  
and the reasons thereof; its pada, its (i. e. of Vyavahāra) subject. This is its general definition.

That (Vyavahāra) moreover, is twofold: a plaint founded on suspicion, and a plaint founded on facts. As says Nārada:—"A

plaint is known to be of two kinds; a plaint founded on suspicion, and a plaint founded on facts; (on) suspicion in consequence of (defendant's keeping) had company; (on) facts, when the stolen goods have come to light". By *Hodhā* is meant, the goods stolen or any other evidence (thereof). By "goods coming to light", therefore is meant, tracing (the offence) by circumstantial or direct proof. A plaint founded on facts is moreover two-fold; (1) Containing the statement of a denial; and (2) containing the statement of an active wrong (by the defendant). As e. g. "Having taken gold &c. from me, he (the defendant) does not give it back.", "He (the defendant) deprives me of my land &c." *Kātyāyana*<sup>1</sup> also has said:—"who does not himself wish to do what is just, or does an unjust act."

This (*Vyavahāra*) moreover is divisible into 18 kinds. As says *Manu*<sup>2</sup>:—"Of these (1) the first is the Re-

\* Page 4.

covery of debt; (2) Deposit, (3) Sale without ownership, (4) Concerns of several partners together, (5) and Resumption of gifts. (6) Non-payment of wages, (7) Breach of contract, (8) Rescission of sale and purchase, (9) Disputes between the owner (of cattle) and his servants; (10) the law of Boundary-disputes, (11) Assault, (12) and Slander; (13) Theft, (14) Heinous offences. (15) Adultery or seduction; (16) Duties of husband and wife; (17) Partition; (18) and Gambling and betting. These are in this world the eighteen topics of Judicial Proceedings. Even these have become multiplied into many more by the varieties of the points at issue. As says *Nārada*<sup>3</sup>:—"Their branches amount to one hundred and eight. It (a judicial proceeding) is said to have a hundred branches on account of the multifariousness of human transactions."

The author points out that by the expression 'if he informs the king' is meant, he himself voluntarily goes and informs, and not under instigation of the king or his servants. As says *Manu*<sup>4</sup>:—"Neither the king nor any servant of his shall themselves cause an

1. Verse 139. *सर्वद्वय* is another reading.

3. I. 20.

2. Ch. VIII. 4-7.

4. Ch. VIII. 43.

action (lawsuit) to be started, or hush up one that has been brought by another.”<sup>1</sup> Paraiḥ, *by others, i. e.* by one, two, or many others; the Author indicates hereby that a dispute may arise between one man, and one, two, or many men. The text of Nārada *viz.*—“Men conversant with law lay down that disputes between one and many, with women, and with servants, are inadmissible as a suit” refers to suits having different causes of action. 5

By the expression ‘informs the king’ is also meant ‘that clad in a decent or simple dress, the plaintiff should inform the king’ when questioned by him. When the complaint is proper, (*i. e.* according to law), then the summoning of the defendant by sending a seal &c., and the non-summoning of those that are beyond the court’s jurisdiction, or exempt from it (as being afflicted with disease) being evident from the context, has not been expressly mentioned. This, moreover, has been clearly laid down in another Smṛti: 10  
 “At the (proper) time, he (*i. e.* the king or his proxy) should thus inquire of the applicant<sup>3</sup> standing and speaking before him: what is your suit for, and what is your grievance? Don’t fear, speak, O man! By whom, where, when and for what (have you been) troubled? Thus should he ask one who has come to the court. Thus interrogated, what he speaks (as his grievance) he (*i. e.* the king) should consider along with the Councillors and the Brāhmaṇas; and if the complaint be proper or one according to law, (an order bearing) the seal, or a messenger, should be sent to summon him (defendant). 20

“The king should not cause to be summoned a person who is afflicted with a disease, a minor, the old, one in difficulty and one engaged in (religious) duties; Cases where summons may or (nor) a person who would suffer great loss<sup>4</sup> if he may not issue. were summoned, a person afflicted with pain 30  
 (caused by the separation of relations); persons engrossed in the king’s service, or in celebrating festivals; the

1. The Bālabhāṭṭi and the Viśveśwari give an alternative meaning thus: “nor should he accept a plaint presented unjustifiably by a party.”

2. Kātyāyana Verses 86-88.

3. Plaintiff;—*Lit*: one who pleads his cause in court. The reading given in the foot-note is adopted: another reading is ‘standing in a humble posture.’

4. Bālabhāṭṭi P. 9 L. 5 &c.

- intoxicated; persons possessed by evil spirits; idiots or the insane; the aggrieved, or persons who are dependents; (nor) a young and helpless woman, a high-born lady, a woman recently delivered, a maiden belonging to the highest tribe; (because) these females are declared to be dependent on their tribes. <sup>1</sup>A summons is allowed against women upon whom their families are dependent, prostitutes, and those who are prostitutes, as also against such as are of low birth or are degraded. Taking into consideration the time and the place, as also the importance or otherwise of the cause, the king may cause even the infirm &c. to be summoned and brought comfortably by means of conveyances. He may even summon, in weighty matters, hermits and the like, who have retired into the woods, after notice of the complaint taking care however that he thereby does not give any offence."

- The law of arrests which is plain in itself, has been laid down by Nārada:—"A plaintiff should arrest a defendant who absconds when the cause is about to be tried, and one who disregards the plaintiff's words, until the legal summons has been issued. Confinement to a place, arrest for a limited time, restrictions regarding travelling, and prohibition from a specific act; this is the fourfold division of arrests. One subjected to an arrest must not transgress it. If one arrested at a time proper for arrests transgresses his arrest, he should be punished. One who, in causing an arrest, acts improperly, shall also be liable to punishment. One arrested while crossing a river, or in a forest, or in a bad country, or during a great calamity, or while in similar predicaments, commits no fault by transgressing his arrest. One about to marry, one oppressed by a disease, one about to offer a sacrifice, one afflicted by a calamity, as also one (already) accused by another, and one engaged in the king's service; (as also) cowherds engaged in tending cattle, cultivators in

1. Verses 97, 98.

2. 'At their leisure and by means of conveyances' *Bālabhāṭṭi*.

3. *गण्यमानो*—or it may also be rendered "having ascertained the importance of the complaint."

4. I. 47-54.

the act of sowing the crops, artisans while engaged in their own occupations, and warriors during warfare.

Arrest means a restraint by the king's orders. The weak and others (exempted) shall depute their son or some other relative; and these (relatives) will not become liable for speaking without authority for another, as will be seen from the text of Nārada: "He, who is not either the brother, the father, or the son, nor is one acting under an order or authority of another, and speaks for him, deserves punishment; as does he who makes contradictory statements in judicial proceedings." (5).

### Viramitrodaya

The investigation of a Judicial Proceeding (*Vyavahāra*) being dependent on the knowledge of the subject of a judicial proceeding (*Vyavahāra-viśhaya-jñāna*) the Author mentions generally the subject of a *Vyavahāra*

### Yājñavalkya, Verse 5.

*Mārgena* 'by a way', i.e., means which is outside the *Smṛtis* and good usage; *parairādharṣhitāḥ*, 'by others injured', i.e., outraged; *rājñe*, 'to the king', of the attack by another, *avedayati*, 'informs', i.e., 'that', then becomes *vyavahārasya padam*, 'the subject for a judicial proceeding', such as the Recovery of Debts and the like.

By the use of the word *chet* 'if', it has been indicated that the initiation of a dispute should not be started by himself. That has been stated by Manu: "Neither the king nor any servant of his shall themselves cause any action (law suit) to be started, or have up one that has been brought by another." The reading *yadā*, 'which', is approved of Miśra and others. Which, e.g., the Recovery of Debts and the like he informs that should be utilised.

The plural in *paraiḥ*, 'by others', is where the matter at issue is one. Where, however, the points at issue are different, the text of Nārada applies: "Of one with many, against women, or against agents, a dispute is admissible."

1. Ch. II. 23;

2. Ch. VIII. 43.

3. In the place of *chet* (चैत्) if.

4. Ch. II. 12. first quarter.

By the use of the word *hi*, 'indeed' it is intended that what has been complained of, must necessarily be investigated. There, Brhaspati mentions a special rule "The preceptor and the pupil, the father and the son, the husband and the wife, the master and servant, of these  
5 when brought together, a dispute is not permissible. Of one with many, with women, and with servants, a dispute is inadmissible, as has been declared by the learned. That which has been excluded by the king, as also that which is likely to be against the interests of the citizens, or of the nation in entirety, as also similarly of the subjects. Others also as  
10 are antagonistic to (the interests of) the City, village, and the people in general, all such disputes have been declared as inadmissible."

That subject of a judicial proceeding, moreover, generally is of two kinds, from a plaint founded on suspicion, and a plaint founded on certainty. A plaint, moreover, is two-fold, in the form of an assertion  
15 and in the form of a denial; as 'my gold has been taken away by him', and 'Having taken money as a loan from me, he does not give.' As says Kātyāyana<sup>1</sup>:—"What is just, he himself does not wish to do, or who does what is unjust". Manu<sup>2</sup> particularly classifies the topics for a judicial proceeding thus: "Of these, (1) the first is the recovery of debts,  
20 (2) deposits, (3) sale without ownership, (4) concerns of several partners together, (5) and resumption of gifts, (6) non-payment of wages, (7) breach of contract, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and the cowherds, (10) the law of boundary disputes, (11) assault, (12) slander, (13) theft, (14) heinous offences,  
25 (15) adultery or seduction, (16) duties of husband and wife, (17) partition, (18) gambling and betting; these are in this world the eighteen topics of Judicial Proceedings." (5).

### S'nlapāṇi.

#### Yājñavalkya, Verse 5

In a way outside the *Smṛtis* and good usage, one pursued by another,  
30 either monetarily or bodily, one complains when troubled, that is the point for the investigation by a Judicial Proceeding. That is of eighteen kinds, so says Manu<sup>3</sup>: "Of these (1) the first is the recovery of debts, (2) deposit, (3) sale without ownership, (4) concerns of several partners together, (5) and resumption of gifts, (6) Non-payment of wages, (7)  
35 breach of contract, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and the cow-herd, (10) the law of boundary disputes, (11) assault, (12) slander, (13) theft, (14) heinous offences, (15) adultery or seduction, (16) duties of husband and wife; (17) partition;

1. See Nārada II. 12, last quarter.

2. Verse 139.

3. Ch. VIII. 4-7.



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By the expression if he 'informs', is meant that by himself a dispute should not be started. *Bṛahaspati* states a special rule, "The preceptor and the pupil, the father and the son, the master and servant, 5 of these if brought in conflict together, a judicial trial cannot be admitted" (5).

When the defendant is brought by one of the (three) modes, *viz.*, by the signet, the written order, or the messenger, what further should be done? So the Author replies

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### Yājñavalkya, Verse 6.

In the presence of the defendant should be reduced to writing whatever is alleged by the plaintiff, and marked with the year, the month, the fortnight, the day, the name, the caste, and the like.

15

*Mitākṣharā* :—What is asked for is the *ārtha*, (the relief sought) the object to be accomplished; and a plaintiff (*Arthī*) is the one who sets it up. His opponent is *pratyarthī*, the defendant.

*Before, agrataḥ, tasya*, (of) him, *i. e.*, in the presence of him, *lekhyam*, should be written, should 20 The Characteristics of a be reduced to writing. *Yathā*, whatever, in which mode *i. e.*, as alleged before at the time of making the first complaint; and not otherwise; for in that case on the ground of departure (from the first complaint) the trial would be vitiated. For "one who alters his former statement, 25 one who shuns the judicial proceeding, one who does not put in an appearance, one who makes no reply, as also one who absconds after being summoned; these are the five varieties of a faulty (*Hina*) litigant."

1. Nārada II. 33. *Kātyāyana* states the several amercements for these; thus: see verse 202.

अन्यथादीं णाम् ५ च क्रियाद्वेयी णान्दश । नोपस्थाता दशद्वौ च पोटशेष निहन्तरः ॥  
आहृतमवलदी च णाम् प्रहस्तद्वौ विज्ञानिम् ।

By the use of the word *hi*, 'indeed' it is intended that what has been complained of, must necessarily be investigated. There, Bṛhaspati mentions a special rule "The preceptor and the pupil, the father and the son, the husband and the wife, the master and servant, of these when brought together, a dispute is not permissible. Of one with many, with women, and with servants, a dispute is inadmissible, as has been declared by the learned. That which has been excluded by the king, as also that which is likely to be against the interests of the citizens, or of the nation in entirety, as also similarly of the subjects. Others also as are antagonistic to (the interests of) the City, village, and the people in general, all such disputes have been declared as inadmissible."

That subject of a judicial proceeding, moreover, generally is of two kinds, from a plaint founded on suspicion, and a plaint founded on certainty. A plaint, moreover, is two-fold, in the form of an assertion and in the form of a denial; as 'my gold has been taken away by him', and 'Having taken money as a loan from me, he does not give.' As says Kātyāyana<sup>1</sup>:—"What is just, he himself does not wish to do, or who does what is unjust". Manu<sup>2</sup> particularly classifies the topics for a judicial proceeding thus: "Of these, (1) the first is the recovery of debts, (2) deposits, (3) sale without ownership, (4) concerns of several partners together, (5) and redemption of gifts, (6) non-payment of wages, (7) breach of contract, (8) rescission of sale and purchases, (9) disputes between the owner (of cattle) and the cowherds, (10) the law of boundary disputes, (11) assault, (12) slander, (13) theft, (14) heinous offences, (15) adultery or seduction, (16) duties of husband and wife, (17) partition, (18) gambling and betting; these are in this world the eighteen topics of Judicial Proceedings." (5).

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The Characteristics of a Plaint. Before, *agratah, tasya*, (of) him, i.e., in the presence of him, *lekhyam*, should be written, should be reduced to writing. *Yathā, whatever*, in which mode i.e., as alleged before at the time of making the first complaint; and not otherwise; for in that case on the ground of departure (from the first complaint) the trial would be vitiated. For "one who alters his former statement, one who shuns the judicial proceeding, one who does not put in an appearance, one who makes no reply, as also one who absconds after being summoned; these are the five varieties of a faulty (*Hina*) litigant."

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आहतमपलवी च पणान् ब्राह्मस्तु विंशतिम् ।

The allegations of the plaintiff having been once reduced to writing at the time of the first complaint, it

P. 5. L. 9. might be said that writing it over again would be meaningless, so the Author says: *Samā-*

5 *māsetyādi*, year, month &c.—marked with the year, month, fortnight, date, day &c., as also bearing the names of the plaintiff and the defendant, and their castes such as *Brāhmaṇa* &c. By the word *Ādi*, &c., are also included the amount, the quantity, place, time, reason for forbearance<sup>1</sup> and the like (*Adini*). As has been said<sup>2</sup> :—

10 “That is termed a plaint or complaint, which is presented or made to the king, and which contains (the *Artha*)

P. 5. L. 12. the cause of action, which is in accordance with the law, which is complete and devoid of

15 confusion, which contains the point at issue, which is couched in significant language, and which is consistent with the claim made

out; (which is) intelligible, not inconsistent, certain, capable of proof, concise yet bringing out the whole cause of action, not impossible in

regard to place or time; which contains the year, the season, the month, the fortnight, the day, the time, the country and the particular

20 district, the village, the house or dwelling place, the point at issue, the designation, the caste, the personal description and age; which contains the measure and quantity of the object to be secured, the

names of the plaintiff himself and of the defendant, and (which is) marked with the names of the ancestors of himself and of the defendant

25 respectively, as also with the names of kings; (which contains) the cause<sup>1</sup> of forbearance and the injury done to self (the plaintiff); in which are mentioned (the names of) the grantee and the grantor.”

*Bhāṣā* is the same as *Pratijñā* or *Pakṣa*. It has no other meaning. The point to be noted is that at the time of the first complaint, only

30 the cause of action is written, while in the presence of the defendant, the year, the month, and other particulars are written.

Although the specification of the year is not necessary in all proceedings, still it is essential in trials concerning

P. 5. L. 19. deposits or pledges, gifts, and sales, on account of the text: “In the case of pledges, gifts, or

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1. *सुवर्ण*—Reason for forbearance—i. e. where the suit is apparently brought after the proper time, plaintiff has to explain the delay.

2. *Bālabhāṣā* refers to this as the text of *Nārada*, but it is not found there.

3. *Yājñ.* II. 23.

sales, prior transactions have preponderance". And also in money disputes, such as in a case where a certain definite amount was borrowed by a certain person and was repaid in the same year, and again in another year the same amount was borrowed by the same person, but on demand he sets up repayment, the utility of the prescribed rule would be that payment and repayment in another year would be proved. The same (rule) would apply in the case of months. The provisions regarding (the specification of) country, place &c. however, apply only in transactions concerning immovables, on account of the (following) text.<sup>1</sup>: "In suits for immovable property, these ten (particulars) should be entered in the plaint *viz.* the province, the village or town, so also the particular site, the caste and names (of plaintiff and defendant), the names of neighbours, the measurement and (descriptive) name of the field, the names of the father, the grand-father &c. as also a description of former kings." *Country*, *e. g.* Central Province &c.; *Place* or village such as Vārāṇasi &c.; *Particular site i. e.* house, field &c. of the same village (town) properly identified and marked out by the specification of boundaries on the East, West, &c. *Caste—i. e.* of plaintiff and defendant such as Brāhmaṇa &c. *Name—i. e.* Dēvadatta &c. *Neighbours i. e.* people residing on the adjoining land. *Measurement i. e.* of land such as a *nivartana*<sup>2</sup>, *Name of the field—*such as—a rice-field, or a rotation-crop field; black-field, white-field &c. And also names of the *father* and *grandfather* of the plaintiff and the defendant; and also a *specification of names* of the three previous *kings*. The object intended is that the year, month &c., in each transaction should be written as much only as is necessary for that transaction.

Such being the characteristics of a plaint, those (plaints) which are wanting in these essentials, but present an illusory appearance of a plaint, are evidently *vicious plaints*, and so *vicious plaints*, have not been separately mentioned by the Lord of Yogis<sup>3</sup> (*Yogis'wara*).

Others<sup>4</sup> have mentioned for the sake of (greater) clearness: "The king should discard a vicious plaint, which, is impossible, does

1. of Kātyāyana. 127, 128.

2. *i. e.* 20 rods.3. *i. e.* the sage Yājñavalkya.

4. see Bṛhaspati III. 6, 9, 10; and Kātyāyana 160.

- not disclose any injury (to plaintiff), is meaningless or causeless, cannot be proved, and which is contradictory." Impossible, as e.g. 'the defendant having taken my hare's horn, does not return it,'
- 5 *Containing or disclosing no injury*, as e.g. 'the defendant moves about in his house in the light of the lamp of my house'.
- Meaningless*, i. e. devoid of a definite meaning e. g. ka, cha, ṭa, ta, pa, ja, ḍa, da, ba, &c. *Causeless*, as e.g. this Devadatta reads in a charming voice near my house &c. *Incapable of proof*, as e.g. "I was ridiculed by Devadatta with the knitting of his brows"; this is
- 10 incapable of proof on account of the impossibility of the means (to prove it). Having a transitory character, (there is) no possibility of (obtaining) a witness much less a writing; nor, being trifling, would it (the fact) be amenable to an ordeal. *Contradictory*, as e.g. "I was abused by a dumb man" &c. Or such as are opposed to the (usage
- 15 of the) town, nation &c.

These are refutable by their very nature, and therefore are not specified. Even here "the impossible &c.,"

L. 8. are selected as illustrations for the sake of explanation,<sup>1</sup> that too does not put away a

- 20 *plaint which is a combination of several counts*. "All the following complaints are declared as inadmissible, viz. that which is prohibited by the king, which is hostile to the (interests of) citizens, or to the whole nation, or to the ministers; as also others which are hostile to the usages of the city, town or eminent citizens"

- 25 It has been said above that "a complaint which joins together several causes of action is not allowed"; but

L. 13. there would be no fault in such a case, if it is expressly described as a *plaint 'mixed up of*

- 30 *many objects*', it being unobjectionable to allege that "my gold, clothes, or silver has been taken away by this man."

1. व्युत्पत्तिः—Means a clearer explanation by drawing attention to the component parts of the sentence or words, as opposed to a rough, or general, or popular conception. It is the same as तद्वत् ज्ञानं sometimes used elsewhere.

The meaning is that we know, without this text, that plaints which are अग्रसिद्ध are पक्षमासास and must be rejected; still the text is used to make the gist of the meaning of the word पक्ष clear. By व्युत्पत्ति here is meant the व्युत्पत्ति of the word पक्ष. तद्वत्, still these several texts (denoting पक्षमासास) do not include the case of अनेकपदसंकीर्ण. For it is not a case of पक्षमास at all, as the only defect of that plea is that it cannot be gone into simultaneously.

If it be said that a plaint becomes vicious on account of mixing together several counts in suits for 'the recovery of debts' &c., that too will not hold. For, the plaint is allowable which contains averments like the following, viz. 'He borrowed my rupees at interest', 'I delivered gold into his hand' and 'he deprives me of my field.' Only (in such cases) on account of a difference in the causes of action the trials are held separately in succession and not all together. As says Kātyāyana<sup>1</sup>: "A king, desirous of arriving at the truth, may undoubtedly admit even that plaint which contains several counts, but which is in conformity with the principles of law." Therefore the meaning of the rule is, that a plaint containing several counts will not be allowed to be established in all the counts at one and the same time. 5 10

The word (*Arthi*) plaintiff, includes his son, grandson &c., as they have a common interest. One specially appointed as an agent, is also presumed to have an identity of interest on account of the appointment, according to the text<sup>2</sup>—"If one is deputed by the plaintiff or is chosen by the defendant as his representative, his success or defeat is regarded as that of the party for whom he (the representative) pleads." The success or defeat of the agent or representative is of the original principal only. 15 20

This, moreover, should be jotted down upon the ground or on a board with white chalk, and after it has been revised and corrected by rubbing off and rewriting, it should be written down upon a paper, according to the following text of Kātyāyana<sup>3</sup> viz. "The *Prâdvinâka* or the Chief Judge should get down the plaintiff's statement, as made by him in his own way, on a board in white chalk, and then on a paper, after it has been revised." The revision and correction should be made only while yet the answer (of the defendant) has not been filed, and not thereafter, as otherwise there is the fear of the proceeding never ending. 25 30

1. Verse 137.

2. Of Nārada I. 22.

3. Verse 131.

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2. Of Nārada I. 22.

3. Verse 131.

- Hence Nārada<sup>1</sup> has said: "He (i. e. the Judge) may make corrections in the complainant's first complaint so long as the answer is not received; being stopped by the answer, the correction should cease." If the Councillors cause an answer to be filed without revising the plaintiff's first complaint, then the Councillors should be punished according to the punishment laid down in the text<sup>2</sup> (*Rāgālobhāt &c.*) "out of passion, avarice &c.", and the trial should be re-commenced by the king, commencing with the solemn affirmation.

### Viramitrodaya.

- Such a Judicial Proceeding has four feet (or parts), so as the Author will state hereafter, there, first in the part regarding the Plaint, the Author states the function of the king<sup>3</sup>

### Yājñavalkya, Verse 6.

- Arthind*, 'by the Plaintiff', *Pratyarthino-agrato*, 'in the presence of the Defendant' should be caused to be written. *Samd*, 'the year'; *māsah*, 'month' is well-known; *tadardham*, 'half of that', i. e., the fortnight; *akah*, 'the day', these are the periods for a plaint, i. e., these periods of time are for the part dealing with the Plaint. *Nāmajāti*, 'name and caste', i. e., of the Defendant, as also of himself.
- By the use of the term *A'di*, 'and the like,' are included, the quantity of the amount and the like stated by *Kātyāyana*<sup>4</sup> thus: "The amount of the claim, the material and the quantity; similarly the name of oneself and also of the kings in successive order, of the place of residence, also the name of the object in dispute, and in genealogical order the names of ancestors, the (nature of the) injury, the grantor and the grantee, and also other causes for forbearance—these should be stated in the plaint, and (the plaint) constituted.

- By this—"In such and such a year, such and such a month, of myself by name such and such, the grandson of such and such, the son of such and such, and of a particular caste, by such and such a one, the

1. Not found in Nārada; but see *Brhaspati* III. 15.

2. *Yājñ.* II. 4. p. 643 above.

3. i. e., either the king himself when personally attending to the investigation or the Judges appointed by him.

4. Verses 125, 126.

grandson of such and such, the son of such and such and by name such and such, within the territory of such and such a king, so much quantity of gold was taken as a loan, for the repayment of that, a demand was not made by me upto such and such a time out of regard for his friendship; or was demanded in the last year, &c., thus, containing these and like recitals comes to be the body of the written complaint to the king. But there, 'you owe me a hundred of gold, you having obtained from me as much amount as a loan', is the body of the Plaint, 'You should give', is the expression of the relief, while the rest is useful for a decision. Thus, where as much portion of the complaint becomes established, so much should be stated by the Plaintiff in the plaint, and he caused to be written by the king, otherwise it should be noted that there may be the fault of an undisclosed proof. The magnitude of the amount as also an excessive cause of trouble may also be included in addition. In regard to that also, justice which is asked for, must be included in the first information.

'By the plaintiff'—this is where it is possible. When, however, he is not available, says Nārada<sup>1</sup>: "If one be deputed by the claimant, or chosen as his representative by the defendant, he for whom he speaks, of those shall be the victory or defeat. (22). He, who is not either the brother, the father, or the son, nor is one acting under an order or authority of another, and speaks for him, deserves punishment; as does he who makes contradictory statements in judicial proceedings." (23).

Brhaspati<sup>2</sup>: "For persons of immature intellect, for the dull, the intoxicated, the old, the women and for persons suffering from a disease, one may depose for a plaint or an answer, even though the man may not have been appointed."

In some cases, however, Kātyāyana<sup>3</sup> prohibits an agent thus: "In accusations for Brāhmicide, drunkenness, theft, sexual intercourse with the preceptor's wife, a representative is not allowed, and even in similar other accusations such as, for homicide, theft, crim. con. with others' wives, eating the uneatable, as also abduction and deepuiling of a maiden; for abuse, false measures, similarly for hatred against the king, a representative must not be permitted to be given; the Actor must plead in person."

The duties preceding the plaint, either of the king, or of the Complainant, being too well known in other *Smṛtis* have not been stated

1. Intr., Ch. II. 22-23.

2. Ch II. 34.

3. Verses 93, 94, 95.

by the Author of this work. *e.g.*, says Kātyāyana<sup>1</sup>, "When a party is in possession of a thing seized by him, a trial should not be started by the king; it should either be restored to him, or it should be deposited with a third party." And Nārada<sup>2</sup>: "One who absconds when the cause is to proceed, who disregards the plaintiff's words, such a defendant the plaintiff may arrest, pending the summons being served (47). If one arrested at a time proper for arrests, transgresses his arrest, he should be punished. One who, in causing an arrest, acts improperly shall be liable to punishment" (51). Also, "One arrested while crossing a river, or in a forest, or in a bad country, or during a great calamity, or while in similar predicaments, commits no fault by transgressing his arrest." (49). So, "One about to marry, one oppressed by a disease, one about to perform a sacrifice, one afflicted by a calamity, as also one who is accused under the law, as also one engaged in sowing operations (52). Cowherds engaged in tending cattle, cultivators in the act of gathering the crops, artificers also during the period while engaged in their occupations, and warriors during warfare (53). One who has not yet arrived at years of discretion; a messenger, one about to give alms, one engaged in a vow; those in difficulties also, must not be arrested, nor should the king summon them" (54).

Here, the excellence of the Plaint is 'brief in words, but rich in meaning' as stated by Bṛhaspati<sup>3</sup> and others.

Of the faults, such as stated in the text<sup>4</sup>: "Impossible, faulty, meaningless, senseless" and the like, and their absence has been indicated by the prefix *dh* in the expression *ā-deditam*, 'alleged'; these, moreover, through fear of swelling the treatise are not being expanded here.

Plaintiff, however, must not depose contrary to his first information, as says Bṛhaspati: "That matter, moreover, which one alleges, one must not change in form; nor should he resort to another alternative; if he resorts, he is (deemed to be) defeated in regard to the first." Before, however, the investigation commences, there is no loss to the plaintiff deposing more or less. That says Nārada<sup>5</sup>: "Before the answer to the plaint has been tendered by the defendant, the plaintiff may amend his own statements so long as there is no sight of the

1. Verse 120.

2. II. 47, 49-54.

3. See Ch. III. 6.

4. Of Kātyāyana Verse 140.

5. Ch. II. 7.

The (answer by) confession and avoidance, *Pratyavastandanam*, is, e.g. thus: "true it is that I received, but I returned P. 7. L. II. it, or obtained it as a gift." As says Nārada,<sup>1</sup>

- 5 "If a defendant, admitting plaintiff's written allegations, sets up a plea, that is called a confession and avoidance." The (answer by a) former judgment, *Prāpnyāyam*, or *Res Judicata* would be where the defendant would speak thus, 'I was sued by him on this cause of action, and in that suit he was defeated in a trial at law'. It has also been said by Kātyāyana<sup>2</sup>: "If a person, though  
10 defeated by the customary procedure, again files a written complaint the answer to him would be, 'you were defeated formerly;' this is called the plea of former judgment."

- The characteristics of a proper answer having thus been established, the viciousness of those answers which  
15 P. 7. L. 17. are without the characteristics of a proper answer, but which bear the resemblance of an answer, is self-evident. This has also been made clear in another Smṛiti<sup>3</sup> "That answer which is dubious, departs from the point at issue, is either too short or too long as compared with the point at issue,  
20 covering only a portion of the claim, and is of the like sort, cannot be called a proper answer. An answer which is irrelevant, incomplete, of concealed import, and is inconsistent, as also that which can be understood by an explanation (only), and which is unreasonable, is not an answer which will establish the plea set up". Of these:  
25 *Sandigdham*, 'a dubious answer' is e. g. where it is alleged that defendant borrowed 100 gold coins, the defendant answers 'yes, I did borrow (something) but (I am) not certain whether 100 gold coins or 100 *Māśās*.' *Prakṛādayat*, 'Departs from the point at issue,' as where in a suit for 100 gold coins, the defendant  
30 answers 'I owe 100 *panas*'. *Atyālpam*, 'Too small,' as where in a suit for 100 gold coins, the answer is 'I owe five.' *Atibhūri*, 'Too large,' as where in a suit for 100 gold coins, the defendant answers

1. Of. Kātyāyana 170.

2. Verso 171.

3. Of. Kātyāyana 174, 175.

4. A gold measure,  $\frac{1}{100}$ th part of a *pana*. "मासो विंशतिविधो पाणः पणस्य चरिचरिदः".

'I owe two hundred'. *Pakṣhaikadeśavyāpi*, Covering only a part of the claim; as where in a suit for (recovering) gold, clothes, &c., the defendant answers—'only gold was recovered, nothing else'. *Vyastapadam*, Irrelevant, as in a suit for recovery of debts, defendant answers with reference to an entirely different matter, as, 5  
e.g., in a suit for recovering 100 gold coins, defendant answers—'I have been beaten by him'. *Avyāpi*, Incomplete, i.e., not covering the particulars of the country, place, &c., as, e.g., where it is alleged. 'He has deprived me of my field to the east of Wārāṇasi in the Central Provinces, defendant answers.' "Yes, I have 10  
deprived him of a field." *Nigūdhārtham*, Of concealed import, e.g., in a suit for 100 gold coins, defendant retorts thus 'what! Is it I alone who owe anything to him?' Here by this dubious statement, it is implied that either the Chief Judge, or a Councillor, or the plaintiff is in the position of a debtor to some one else and thus the 15  
statement has a concealed import. *Ākūlam*, Inconsistent, i.e., Contradictory having regard to the statements made before and after; as in a suit instituted for 100 gold coins, defendant answers, 'yes I did receive the amount, but I do not owe it.' *Vyākhyāgamyam*, 20  
*Requiring explanation*, i.e., intelligible by the help of explanations required by reason of the implication or express use of cases and compounds (which are) difficult to split up, or by reason of the use of expressions current in the language of foreign countries. As for example, in a suit for 100 gold coins due under a paternal debt the defendant answers: 'As for the expression *grihita-sata* (a hundred 25

1. This has been given as an instance of the 'Implication or express use of cases and compounds (which are) difficult to split up' (द्वयसिद्धिविभक्ति-समससामवाहाराभिधान). Here, the answer of the defendant is capable of a two-fold interpretation—

(1) From the Defendant's side it may be said, 'even supposing the expression *grihita-satasya pituḥ* means that my father had received a hundred coins, I do not see its connection with gold.'

(2) The plaintiff on the other hand, or even, the court might read in the defendant's answer, 'an admission of the receipt of 100 gold coins by the father.'

And lastly, the fact that the answer is capable of an interpretation either way as stated above is in itself an evidence of (a द्वयसिद्धिसमस) 'a compound difficult to be split up'; another reading is असिद्धम्=irrelevant, faulty.



having been accepted), I do not know its connection with gold coins and my father.' Here, the real meaning (of the defendant's answer) is this: "As for (the expression *grihīta-īatasya pituh*) my father having accepted a hundred coins, I am not aware of his having received gold coins" *Asāram*,<sup>1</sup> *Unreasonable*, i.e., opposed to reason. As in a suit alleging 'he borrowed 100 gold coins at interest, but did not the principal,' the answer is 'True, I have paid the interest, but not receive the principal.'

By the use of the word 'answer' in the singular number, a combination of answers is excluded. As says

\* Page 8. *Kātyāyana*,<sup>2</sup>—"That which admits part of the claim as true, sets up a special plea<sup>3</sup> to another part, and makes a denial of a third, is regarded as no answer on account of the mixture (of several pleas)." The same Author<sup>4</sup> thus explains the reason why such (a statement) is regarded as no answer: "In one suit, the burden of proof cannot lie on two litigants, nor can both obtain judgment, nor can two proofs be adduced simultaneously in one suit." In a combination of the answer by denial and by special exception it is incumbent both on the plaintiff and the defendant to adduce evidence, as has been said: "In the case of a denial,<sup>5</sup> the proof rests on the plaintiff, while in a special plea, on the defendant." The simultaneous proof by both in one transaction is contradictory. As for instance where the allegation is, "he has taken gold and 100 rupees", and the answer is "gold was not taken, 100 rupees were taken, but were returned." In a combination of the pleas of special exception and former judgment, the defendant alone has to adduce evidence. "In this combined plea of former judgment and special exception, the defendant must exhibit proof." As where the charge is that gold was borrowed and it is met by an answer that it was returned, and also that the plaintiff was defeated by a judicial trial with regard to silver. Here the former judgment should be proved either by (producing) the decree itself, or by the evidence of

1. *Kātyāyana* illustrates thus:

काकश्य वृन्ता नो सन्ति खलुम्यालि बहुपदम् । अष्टाविंशि तत्तेन सम्यक् नोत्तरमिच्छते ।  
Verse 189.

3. Correspond to the pleading, in English law of "*Confession and avoidance*."

4. Verse 190.

5. मित्र्या—मित्र्याः अन्वयमिदं *Bālabhāṣā* P. L. 19.

those who gave (or were present at) the former judgment, while a plea of special exception should be proved by witnesses, documents, &c. Thus there is an opposition between the pleas of *res judicata* and special exception.

The same would be the view in the case of a combination of three pleas in an answer. As, e.g., where it is alleged 'he (the defendant) borrowed a hundred gold coins, a hundred rupees, and also clothes, the defendant answers "True, gold was borrowed, but it was returned; the hundred rupees were not taken at all; and as regards clothes, he has already been defeated in a former judgment." So also in the case of a combination of four pleas.

These mixed pleas constitute vicious answers when set up simultaneously, each particular plea not being likely to be established without its particular proof; but when taken separately they are good answers. The order is to be determined according to the will of the plaintiff, the defendant, and the concillors.

When, however, there is a combination of two, that plea, which contains the most important point should be taken up for proof first, and the suit should proceed; the minor plea should be taken up afterwards and the trial determined. Where there is a combination of (the plea of) admission and another plea in answer, the suit should be tried by taking up the other plea (for proof); for a plea of admission there being no (necessity of) proof.

As Hārīta after observing: 'If a denial and a special exception should occur together, and if the plea of admission be made with any other, which of these should be accepted as an answer?' has remarked: "In such a case, that which contains the most important point or which is conducive of proof, is to be considered as an unmixed answer; any other answer becomes otherwise;" i. e. it becomes a mixed answer.

The meaning is that the order in which such mixed pleas are taken up for determination depends on choice by regard to the plea

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1. It being impossible to adduce evidence for both the pleas simultaneously.

that survives last. Of these, the plea containing the *important point* occurs, as *e.g.* where in a suit it is alleged that "the defendant borrowed gold, one hundred rupees, and also clothes" and the answer is, "True the gold was taken, but one hundred rupees were not taken, and as for the clothes, they were taken, but were returned." Here the answer by denial being the important plea, the trial should proceed after taking plaintiff's evidence. Then the trial should proceed with reference to the clothes. The same order should be followed in the combinations of denial and previous judgment, or of special plea and previous judgment. Moreover, in the same suit, where the answer is "True, I received the gold and the hundred rupees, (but) I will repay (them); the clothes however, were not received, or having been received, were given back; or that he (the defendant) was defeated formerly in regard to the clothes"; in such a case although the admission is the most important point, there being no necessity of evidence for it, the trial should proceed after taking evidence on the plea of denial &c. Where, however, the denial and special plea cover the whole point, as *e.g.* where the plaintiff identifying his cow by the horns, says "This is my cow, (it) was lost at a particular time, and was seen today in this man's house"; while the defendant says: "This is false, the cow has been in my house even before the time mentioned by him (plaintiff), or it was born in my house." It cannot be said that this is not an answer, as it is competent to meet the point in dispute, nor can it be a simple denial, as a special plea has been introduced. Nor, there being no admission of a portion of the plaintiff's case, is it a special plea. Therefore this is an answer by denial coupled with a special exception. Here defendant has to adduce evidence, on account of the text "the burden is on the defendant, in (the case of) a special exception."

It may be asked, under the text: "In a denial, the evidence should be led by the plaintiff" why does not the burden (in the above case) lie upon the plaintiff? The answer is that the text applies to a pure denial. Then it is asked why should not the text "In a special exception, the burden is on the defendant" be made likewise applicable only to a simple plea of special exception? the

answer is, "no, this cannot be; every plea of special exception necessarily involves a denial; and therefore a special exception pure and simple can never occur."

As the wellknown plea of special exception contains an admission of a portion of the plaintiff's case, there

\* P. 9. is a denial of the rest. As *e.g.* "True, I did receive a hundred rupees, but I do not owe

(the amount) now, as I have repaid it." In this example the particular point to be noted is, that there is no admission of a portion of the plaintiff's case. This moreover has been clearly laid down by Hārīta :—"Of the two answers *viz.* of denial and special exception, the special exception should be accepted (as an answer)."

Where the pleas of denial and previous judgment cover the (whole) point at issue—as *e.g.* in the allegation, "He owes a hundred rupees to me" the answer is: "This is false; he (the plaintiff) has been defeated formerly on this point"; there also the burden of proof is on the defendant, on account of the text, "When *res judicata* and special exception are set up as a combined plea the defendant should exhibit proof." Because, the plea of a former judgment pure and simple can never occur, and (therefore) it might be said that the plea is no answer, likewise, the plea of admission is a good answer (precisely) because, it meets the point at issue by admitting as established the claim which in the plaint was stated as the matter to be established.

Where, however, there is a combination of a special plea and previous judgment, as *e.g.* when charged with having received a hundred, the defendant answers, "True, it was received, but it was returned, and, moreover, he (the plaintiff) has been defeated before on this very cause of action", in such a case, proof will be exhibited (in the order determined) according to the defendant's choice. Then the result is, that a double proof in one suit by the plaintiff and the defendant should not be allowed.

#### Vīramitrodaya.

When the nature of the complaint has thus been reduced to writing by the king, the Author proceeds to state the function of the

Authority should grant time to the Defendant. Also what the Author will state hereafter, that is stated to be the additional time. (147)

Vyāsa<sup>1</sup>: "If at that time there occur no fault indicated by the acts of the king or divine agency, by merely giving up time, he does not become defeated. If the fault be due to acts of the king or of God, he should establish (his case) by means of witnesses; but if he resorts to begging,<sup>2</sup> he should be punished and should be compelled to pay the amount."<sup>3</sup>

The plaintiff, however, does not get time for the formulation of the plaint. So says Kātyāyana<sup>4</sup>: "Since the commencement of the litigation was resolved upon by him after a long deliberation, therefore he must not get time; one who is proceeded against, should, however get time."<sup>5</sup>

To this Bṛhaspati mentions an exception:—"If the plaintiff owing to immaturity, is not able to declare, then time should be given by regard to the transaction and the capacity". When, however, the defendant without the existence of causes prescribed by the *S'āstras*, does not adduce an answer, then he is (deemed to be) defeated, vide the text<sup>6</sup>: "One who alters his former statement, one who shuns the judicial proceeding, one who does not put in an appearance, one who makes no reply, and one who after he is summoned runs away; these are stated to be the five varieties of a faulty (*hīna*) claimant"<sup>7</sup>; as also under the text<sup>8</sup>: "In the plaint when stated, if one does not give a proper answer, after the lapse of seven nights he becomes defeated, and deserves penalty."

That answer, moreover, is of four kinds as says Kātyāyana<sup>9</sup>: "Pleading the truth, or the falsehood (of the plaint); setting up a special plea, or a decision in a former judicial proceeding; thus, the answer is four-fold". Vyāsa<sup>10</sup>: "Admitting the truth of the point at issue, is known as *Admission*; giving a reason, (is known) as a *special plea*; and declaring it as false (is known) as *denial*". Bṛhaspati<sup>11</sup>: "If a

1. These texts are also attributed to Kātyāyana. See verses 161, 162. There the reading is different, as will be found by a comparison of the two.

2. झुगुन—The other reading झुगुन 'through crookedness' is better.

3. Verse 134.

4. Cf. Kātyāyana Verse 202.

5. Cf. Bṛhaspati IV, 4.

6. Verse 165.

7. Cf. Kātyāyana Verse 166.

8. Cf. Kātyāyana Verse 171.

person, though defeated by the customary procedure, again files a written complaint, the answer to him would be 'you were defeated formerly'; this is called the plea of 'former judgment'.

Here, the first, being in the form of an admission of an established fact which becomes the means of proof, is a good answer. It is not that thus the defendant is restricted<sup>1</sup> because in this investigation about a fact, it is inadmissible as a restrictive factor.

The answer by denial is, moreover, four-fold; so says Vyāsa:  
" 'This is false'; 'I do not know', 'I was not present at the time,'  
and 'I was not born at the time'; thus the answer by denial is of four varieties. "

Here by saying 'this is false', 'I do not know', and by making similar defences, there is a denial or concealment of the fact itself; by the answer 'I do not know', by pleading the non-remembering of the essential fact, it is intended to maintain its absolute non-existence; to the allegation in the plaint 'you took this loan in Vārāṇasi,' the answer being, 'I was not in Vārāṇasi,'; to the allegation, 'you obtained twenty-five years ago,' the answer being 'Indeed, I was not born at the time', thus by a series of allegations and refutations indicating the meaning; in an allegation, 'by your father was a hundred of gold taken', the answer that 'I do not know', is an assertion and a refutation, and not an answer 'by denial.'

It should not, however, be supposed that thus there being an absence of an answer (as such), there should be a success for the plaintiff, as all circumventions are necessarily to be disposed of by a judicial trial according to law, and thus these are admissible as means of proof by the deponent. Hence it is that in the case of an overt sale (the plea of) non-delivery as a gift by the owner<sup>4</sup> has also to be weighed. Here, therefore, the non-proof of the fact in issue is the fault in the plaint.

The answer by 'a special plea' is, moreover, three-fold by regard to the cause of action alleged in the plaint, it may be 'more strong', 'equal in strength' or 'less strong'.

There, the first is as, e.g., in the allegation, 'You obtained a hundred from me' the answer is 'yes, but it was paid off.' Here the central point of the absence of proof of non-payment not being pressed,

1. i. e. prevented from proceeding further on.

2. Also Kātyāyana, Verse 169.

3. i. e. the time of the alleged transaction.

4. ऋद्धि—The owner of the thing which was supposed to be lost.

non-proof is the fault in the plaint. This is also called a counter-plea, *Pratyavaskandana*, vide this text of Bṛhaspati: "If a defendant, while admitting plaintiff's written allegations sets up a plea, that is called a confession and avoidance".

The second,<sup>2</sup> as in a plaint that 'this land is mine as it has come to me in successive generations' the same is the answer. This, moreover, is in reference to a valid plea in defence. 5

The third as in a plaint that 'this land is mine, as commencing from such a period it has been mortgaged with me by the owner,' the answer is 'commencing from five years ago, that has been mortgaged with me by him in the fifth year'; this also is in reference to a valid plea. From the text<sup>3</sup> "In transactions of mortgage, gifts, and sales, the prior is more powerful". Here also, for dispelling fraud, proof, &c., has to be adduced. 10

The answer of a 'former decision' is, however, in this form, viz., "In regard to this cause of action, he has been conquered by me", and the like. 15

Here Kātyāyana<sup>4</sup>:—"That which admits part of the claim as true, sets up a special plea to another part, and makes a denial of a third, is regarded as no answer on account of the mixture (of pleas)". There, some explain the meaning of the text thus: In a claim for a hundred taken, 'I owe fifty certainly, twenty-five has been paid off, and twenty-five was not taken', and the like is no (proper) answer, and hence also "In one suit, the burden of proof cannot lie on both litigants, nor can both obtain judgment, nor can two proofs be adduced simultaneously in one suit" this text<sup>5</sup> becomes consistent. 20 25

Some say that the aforestated mixed answer is admissible, and that therefore all that holds good. That is not proper. Not that each a subject matter itself is not possible, as it is generally seen; nor that each an answer must not be given, it being impossible to prevent the tendering of an answer based as on facts; nor is it that in such an answer defeat alone will follow. In a dispute the answer which challenges an 30

1. Vijñāneśwara assigns this text to Nārada. See text p. 7. l. 12 Tr. p. 661. It is not found in the 'Extracts from Bṛhaspati' published by Dr. Jolly, S.B. E., Vol. XXXIII.

2. i. e. the second variety of a कण्ठोदा.

3. Yājñavalkya II. 25.

4. Verse 182.

5. Cf. Kātyāyana Verse 190.

oath, and also consists of a denial, that has the illusive appearance on account of the combination. This is the meaning of the sentence. The rest, as also the expression 'in one part' repeated twice is a repetition.

Indeed, in such a case what would be the effect of the text 'In one suit &c.'? The answer is: In one suit in a simultaneous manner, there cannot be (adduced) evidence by both; this and the like is its meaning. Or shortly stated, that text is intended to prohibit evidence by both to be simultaneously adduced. 7 (1).

After the written answer is thus filed, the establishment of the point at issue being dependant on the means of proof, it may be asked who should exhibit the proof? Anticipating this the *Author* says

Yājñavalkya, Verse 7(2).

Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute (or alleged) is (proposed) to be established. 7(2).

Mitākṣharā:—Tataḥ, next, after the answer; arthi, the Plaintiff, one who has to gain a point; sadyaḥ, immediately, even immediately after; lekhaḥ, should have written down. What has been sworn to in the complaint and is to be established is the Pratiñātārtha, the matter in dispute. Of that the sādhana, means of proof, i.e. that by which the matter is to be established, i.e., the measure (of proof). Here, by saying (the plaintiff) 'should have immediately written down', it is implied that some delay is allowed in stating the answer. That, moreover, will be discussed in detail later on.

By saying that 'the plaintiff should have written down evidence for proving the point at issue' it is meant that the party who has to gain the point should have written down the means of proof of the point at issue. Therefore, in an answer where a previous judgment is pleaded, the previous judgment itself being required to be proved, the defendant himself is regarded as the plaintiff, and so he himself should have his means of proof written down. So also in an answer containing a special plea, the special plea itself being



required to be proved, he who sets up the special plea, himself comes to be (in the position of) the plaintiff, so he should have the proof written. In a denial, however, the original complainant is himself the plaintiff, and he should exhibit the means of his proof.

By saying: "Next the plaintiff should have written down, &c." 5

it is intended to be laid down that the plaintiff

P. 9, L. 19. himself should cause the proof written, and none

else. And, hence also, in the case of an answer

by admission there being no point at issue, neither the complainant nor the defendant being in the position of a plaintiff, there is no 10  
indication of the means of proof, and thus, it follows, that the trial comes to an end at that very stage. This very rule has been clearly stated by Hārita :—"In an answer containing the combined pleas of former judgment and special exception, the defendant should exhibit proof; while in the plea of denial, the original plaintiff; (but) in the 15  
plea by admission, that proof, i.e., is not necessary at all."

### Viramitrodaya

The determination of the result by the king being based on evidence, and the exhibition of that being the duty of the plaintiff, in regard to him, the Author states the third part of the proof 20

### Yājñavalkya, Verse 7 (2)

*Tatāh*, 'aext,' when a proper answer has been made by the defendant, and also caused to be written by the king; *arhi* 'The plaintiff', i. e. the party who has to establish the statement made, respectively either the plaintiff or the Defendant as the case may be; 25  
*pratijñatasya*, 'of the point affirmed,' i. e. of the matter duly stated by oneself, *sāadhanam* 'means of proof' such as witnesses, documents, and the like, himself having set out, should cause to be written through the officers of the king. By the use of the word *sadyah*, 'immediately,' is meant that in the matter of the exhibition of evidence, no delay should 30  
be caused. Thus says Kātyāyana: "No loss of time should be caused by the king in the examination of witnesses; great harm might result from (lapse of) time, in the form of the toroing away of justice."

That means of proof, moreover, is twofold, human and divine; as says Bṛhaspati: "Evidence is declared to be twofold, human and 35

divine. Each of these is again divided into a number of branches by sages declaring the principles of law. Witnesses, documents, and inference, thus human evidence is declared to be threefold. Commencing with the balance and ending with the Dharma, thus the divine evidence  
5 is declared to be nine-fold."

That evidence, moreover, is the means of proof. This has been elaborated above. Such proof, however, is not necessary in an answer of admission. In regard to other answers, Vyāsa states a rule thus: "In the pleas of *res judicata*, and that of a special plea, the defendant should  
10 adduce evidence; in the answer of a denial, the first deponent (the plaintiff); in an admission, one need not prove." Here, by the use of the word 'special plea', is intended to state a stronger reason, as the Author *will state* further on: "If the first claim be invalidated, then those of the next claimant should be examined." Kātyāyana<sup>1</sup>: "If  
15 after the plea of admission, a special plea is set up, and if it is stronger, then the case of the defendant must be proved; in the absence of that, the other is deemed to be established<sup>2</sup>." The cause of the debt *viz.* the acceptance of the loan, as alleged before by the plaintiff being admitted i.e. accepted, another stronger reason, such as payment back and the like,  
20 if it is set up in the defendant's statement, then that is to be established, and not the other, by reason of the rule of equal and less force. This is the meaning.

In a plea of denial, however, the burden of proof by this-worldly<sup>4</sup> evidence is on the plaintiff; while of the divine evidence in the form of  
25 an ordeal, oath, or both, on the defendant himself: "No one should compel the complainant into an ordeal; to the one who is complained against should be administered an ordeal by those well-versed in the (rules as to) ordeals." In this text<sup>5</sup>, in the first half a prohibition against the complainant contained in the first half, that kind (of evidence) is  
30 restricted in the latter half to the person proceeded against upon the principle that "when a fact which is established, is opened out," it involves a restrictive proof. So says the revered Mīśra. The Sāmpradāyikas, however, hold that here, by the word *complainant* is meant

1. Yājñavalkya II. 17.

2. Verse 191.

3. साधने तद्विदेतत्; the other reading is साधने तद्वि देतत्—is established, and not the other. In the comments on this verse Viramītrodaya appears to accept this reading.

4. i. e. human evidence.

5. Cf. Kātyāyana Verses 244, 411.

a complaint regarding theft, assault, and the like accusations. In the case of a denial against a claim for a debt etc., they say that even the divine proof is also on the plaintiff. (7)

## S'ulapāṇi

## Yājñavalkya, Verse 7.

After the defendant has comprehended the meaning of the plaint, 5  
his answer should be caused to be written in the presence of the  
deponent of the plaint. Kātyāyana<sup>1</sup> mentions the time for the answer:  
"For transactions of recent occurrence, immediate only is ordained; while  
for those of duration, the chief authority may give time to the defendant."

The characteristics of an answer and its varieties are stated by 10  
Nārada<sup>2</sup>: "Men versed in law consider that an answer, which com-  
prehends (the points raised in) the plaint, is concise, unambiguous, not  
inconsistent, and is easily intelligible without an explanation."  
'Comprehends' i. e. covers. "A denial, an admission, setting up a special  
plea, also; and a former decision, are the answers stated to be four by 15  
those versed in the principles (of law)." "If a defendant give a denial  
to a claim made, that (answer) is known in law as a denial." As says  
Brhaspati: "After hearing the plaint, if the defendant admits it, that is  
called an admission by the scholars of the Śāstris. If a defendant, admitting  
plaintiff's written allegations, sets up a plea, that is called a confession 20  
and avoidance. If a person, though defeated by the customary procedure,  
again files a written complaint, the answer would be, 'you were defeated  
formerly'; this is called the plea of a former judgment."

After the recording of the answer, one should endeavour to prove it.  
So says Brhaspati<sup>3</sup>: "After the first statement and the answer are recorded, 25  
and the judicial proceeding has commenced, the two are welded together  
like two balls of hot iron. Where there is a doubt about the truthfulness  
of the witnesses for both, and the two are in suspense, then as wise men the  
two should effect a compromise (while the uncertainty lasts)."

In the absence of a compromise, the rule in the text<sup>4</sup>: 'then the 30  
plaintiff &c.' prevails. By the word plaintiff, each is indicated in regard to  
his own side, and is to be so taken. Thereafter, the plaintiff should cause  
to be recorded the proof of such witnesses, documents &c., which are the  
means of establishing the point made out in his plaint, and which have  
the characteristic of truthfulness; and not after an interval of time. (7). 35

1. Verse 153.

2. In the Smṛtichandrikā this text is cited as of Prajāpati; see  
P. 42 L. 30.

3. Ch V. 11, 12.

4. Yājñ. II. 7.

What next ? So the *Author* says

Yājñavalkya, Verse 8 (1).

If it (the proof) succeed, he obtains success ; if otherwise, the reverse *i.e.*, if it do not permit, he fails. 8 (1).

- 5 Mītākṣharā :—*Tasya*, of that, *i.e.*, of the means of proof having the characteristics inferable from the several texts to be mentioned further on, about the written documents, witnesses, &c., presently to be described, *siddhau*, in the case of success, if accomplished, *siddhim*, success, in the form of accomplishing the point  
10 at issue, *prāpnoti*, obtains; *ato*, other, than this mode, *anyathā*, otherwise, the non-establishment of the (means of) proof in any other manner brings on, *āpnoti*, the reverse, *viparītam*, *i.e.*, the non-accomplishment of the point at issue which is indicative of a defeat. This is the construction.

#### 15 Viramitrodaya

The Author states the fourth stage, known as the decision of the point involved

Yājñavalkya, Verse 8 (1)

- 20 *Tasya*, 'of that', *i.e.* of the point laid out by evidence such as the witnesses or other means, *siddhau*, 'if established', *i.e.* if borne out, *siddhim*, 'success', *i.e.* victory ; *anyathā*, 'otherwise' *i.e.* if not proved, *viparītam*, 'reverse', *i.e.* non-success, *āpnoti*, 'he gets'. This is the meaning. According<sup>1</sup> to the Mītākṣharā, *viparītam*, 'reverse' means *bhāgam*, 'broken'; that is doubtful. 8(1)

- 25 The Author having thus described the nature of a judicial trial now concludes

Yājñavalkya, Verse 8 (2).

This legal procedure is declared to be of four-fold character in litigation. 8 (2).

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1. But no such position appears to have been taken by the Mītākṣharā.

Mitāksharā :—[The legal procedure, Vyavahāra, referred to in the text<sup>1</sup>, viz. "A king should hold trials, &c., has thus been upadarsitaḥ, described, to be of four-fold character, i.e., by imagining it to consist of four parts in litigation; i.e., in the chapters on payment of debts, &c., as consisting of four parts and being of 5 four kinds. Of these the first part is called the part relating to the plaint and begins with the text<sup>2</sup>: "In the presence of the defendant (the plaintiff) should be written, &c." The second part is the part relating to the answer and is introduced by the text<sup>3</sup>: "the answer of one (i.e., of the defendant) who has heard the plaint should be taken 10 down in writing." The third part relates to evidence and proof and begins with the text<sup>4</sup>: "Next the plaintiff should cause to be written, &c." The fourth part contains the decision regarding the proof of the point at issue and is in the text<sup>5</sup>: "If it (the proof) succeeds, he obtains success." 15

As is said "When disputes regarding their interests arise between men, their settlement according to rules

\* Page 10. laid down in texts is called a Vyavahāra or a judicial trial. The four divisions of it, viz., the 20  
plaint, the answer, the proof, and the decision<sup>6</sup> are laid down in their proper order; hence it is called four-fold". In an answer by admission, however, the proof is not exhibited, and thus the point at issue is not (necessary to be) established (at all), and so it has not the part which contains the means of proof. So it has two parts 25  
only. After the answer is recorded, the decision<sup>6</sup> of the councillors

1. Yājñ. II. 1. p. 632 l. 12. 2. Yājñ. II. 6. see p. 651. l. 11-15 above.
3. Yājñ. II. see p. 661. l. 17 above. 4. Yājñ. II. 7. p. 672 l. 13 above.
5. Yājñ. II. 8. see p. 676. l. 4 above.

6. वरामर्शः=प्रमाणस्य प्रसङ्गान्तराधीः वरामर्शो उच्यते. e. g. बहिःप्रमाणस्य बहिःप्रमाणस्य-परिणतिर्ये पीः वरामर्शः=प्रमाणे बहिःप्रमाणः परिणतिरिति ह्यर्थे वरामर्शः Here the वरामर्श would be the mental process deciding the onus by sifting the statements in the pleadings with the view of discovering

(1) how far these statements are relevant to the issue प्रसङ्गान्तराधीः.

(2) " " " have a reference to the relief claimed ह्यर्थे प्रमाणस्य.

The opponent says that वरामर्श characterized as above has been recognized as a distinct stage in reasoning, how is that Yājñavalkya does not make it a

by ascertaining on whom, between the plaintiff and defendant, the (onus of) proof should lie has not been mentioned by the Lord of Yogis (Yājñavalkya) as a (distinct) part (stage) in a judicial proceeding. and as it (the decision as to the onus) has no reference to  
 5 the parties, it has not been mentioned here as a (distinct) part in a judicial proceeding. This is as it should be.

Here ends the Chapter on General Rules of procedure

### Viramitrodaya

The Author rounds up the body of *Vyavahāra* detailed before

10 Yājñavalkya, Verse 8 (2).

*Vivādeshu*, 'in disputes', such as the recovery of debt and the like, which are the subject matter for consideration, *ayam*, 'this', of this', character, containing the plaint etc. and therefore, *chatuṣpāt*, 'four-footed' i.e. having four parts, the meaning of the word *Vyavahāra*, has (thus) been  
 15 pointed out i.e. illustrated. The illustration is of any *vyavahāra*. Thereby, "In the case of a denial, it is four-footed, as also in the plea of confession and avoidance, and in the plea of *res judicata*; in the plea of admission it should be known to be two-fold", thus in this text of Bṛhaspati, that a two-footed *vyavahāra* has been mentioned, does not matter much.  
 20 'In admissions' i. e., this rule should be so observed 'also' in a plaint to which an answer is not possible. Although even in an (answer by) admission, including the decision, there are three parts, still there, for the declaration of a decision there being no necessity for a separate step, the statement that it is two-footed is  
 25 proper. On account, however, of a statement as to the ignorance of circumstances on which an answer may be founded, it having receded from the position of an answer, including also this, it can be regarded as having four parts. 8 (2).

Here ends the Chapter on General Rules of Procedure.

30 S'ulapāni.

Yājñavalkya, Verse 8.

Upon the evidence adduced being decided to be true, *siddhim*, 'accomplishment' i. e. success, *prāpnoti*, 'he obtains.' In the case other distinct *Pāda* (section or chapter). The author replies in the text  
 उत्तराधिकारं नैव &c. This is the उत्तराधिकारं. See Smṛtyachandrikā pp. 50-54 and note on p. farther on. वेदः पुनरुक्तं विचार्य प्रमाणं नैव विधीयते पृ. ६ पृ. १०

1. Ch. III, 3; see also Kātyāyana, Verse 245.

complainant should not be allowed to be charged with an offence, na pratyabhijayet, *no counterclaim should be allowed.*

Although a 'special plea' has the appearance of a counter-claim, still inasmuch as it is intended for removing a charge against oneself, it does not come under the present exception. Hence, this prohibition is against that form of counter-charge which is not intended as an answer to a charge against oneself. This has been laid down as having reference to the Defendant.

The Author now states the rule as regards the plaintiff

Yājñavalkya, Verse 9 (2).

Nor should any other person be allowed to file a complaint against one who is already under a charge, nor what has already been alleged should be allowed to be changed.

Mitâkṣharâ:—Abhiyuktam cha nānyeneti, *nor should any other person be allowed to file a complaint against one who is already under a charge &c.* As against one who has (already) been charged by another, and who has not got over the charge, another complaint should not be allowed to proceed; moreover, uktam, *alleged*, what was deposed at the time of the first complaint, that viprakṛtim, *change*, (if) containing a contradiction, na nayot, *should not lead*, should not be allowed. The purport is this: Which-ever fact has been deposed to in whatever form at the time of the first complaint, that fact should be taken down in the same manner at the time of the formal complaint, and not otherwise.

It may be asked: It has already been laid down in the text<sup>1</sup>. viz. "Whatever is alleged by the plaintiff should be reduced to writing in the presence of the defendant," why then has it again been repeated in the text<sup>2</sup> "nor should what has already been alleged be allowed to be changed?" The answer is: By the text "whatever is alleged by the plaintiff" is meant that those facts which have been deposed to at the time of the first complaint, (the same) should be caused to be written down in the same manner at the time of the Bhāṣhā or

1. Of Yājñavalkya II. 6.

2. Yājñavalkya Verse 9 (2) above.

(formal) plaint; as it has been said that "a change in the subject-matter ought not to be allowed even though it be made in the same suit"; as *e. g.* having alleged at the time of the first complaint that 'he (the defendant) borrowed a hundred *rupees* at interest', it should not be (allowed to be) stated at the time of the formal plaint or *Bhāṣhā* in the presence of the defendant that 'a hundred *clothes* were borrowed at interest.' In that case, even if there be no change in the suit itself, there being a change in the subject-matter, he (the plaintiff) would be amenable to a penalty as a *hina-wādi*—one guilty of prevarication.

By the text : "nor what has been alleged should be allowed to be changed," a prohibition against a change into another suit is laid down even in cases where the subject-matter remains the same. As *e. g.* having said at the time of the first complaint that 'having taken a hundred *rupees* at interest, he (the defendant) does not repay (the amount), he says at the time of the second or formal complaint (*Bhāṣhā*) that 'he deprived me of a hundred *rupees* by force.'

There<sup>1</sup>, a change to another subject-matter is prohibited, while here<sup>2</sup>, a change in the nature of the suit is prohibited, and thus there is no fault of repetition. Nārada<sup>3</sup> has made this very thing clear : "He who abandons his first allegations, and resorts to a new one, should be regarded as a prevaricator on account of the change in the suit<sup>4</sup>."

A prevaricating litigant becomes amenable to punishment, but he does not lose his suit. Thus this direction given in the present verse, *viz.* "until the complaint is disposed of &c.," is intended to avoid mistakes on the part of the plaintiff and the defendant, and has no reference to the proving or not proving of the point in dispute. Hence the Author says further on<sup>5</sup> : "After discarding all circumvention, the king should decide disputes according to the actual facts."

1. *i. e.*, in the text प्रवर्धिते प्रतो. &c.

2. " " नोक्तं विप्रक्षिप्य नयेत् ।

3. II. 24.

4. पद (Pada) as used here is intended to indicate a suit, the statement of the cause of action; while वस्तु (Vastu) indicates the subject-matter of the suit, or the point involved.

5. Yājñ. 11, 19.



This (limitation of the rule), however, should be observed in suits relating to property<sup>1</sup> or title. In disputes arising out of acts resulting from violence, plaintiff loses (also) his suit if he makes a false statement. As says Nārada "A verbal trickery does not vitiate all actions relating to property; for in suits relating to cattle<sup>2</sup>, women, land, immoveables and the recovery of debts, the claim is not dismissed even though the claimant is liable to a penalty." This is explained (thus): *In all suits relating to property*, not in those originating in anger or passion, *a verbal trickery*, even if it be through mistake, *does not annul*, does not get defeated i. e. he does not lose his case; his case that is pending. An example here is 'cattle, women &c.' i. e. as in suits relating to cattle, women, recovery of debts, by an erroneous declaration a plaintiff does not lose his case, though he is (otherwise) liable to penalty, so (is the case) in all suits relating to property.

From the specification of 'suits relating to property,' it appears that in suits arising out of acts of violence, the party loses also the claim that is pending, in the case of an erroneous statement. As e.g. having stated at the first complaint that "I was struck on the head by him with his foot", if he says at the time of the formal complaint or *Bhāṣā* that "I was struck (either) by the hand or by the foot", he, not only is amenable to punishment, but his complaint is also dismissed. 9 (2).

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1. Note the following divisions of व्यवहार.



2. Ob. II. 25. Dr Jolly reads सवेत्तुमि for सवेत्तुमि.

3. वयसी is a better reading, वरसी another woman.

To the rule—"until the complaint is disposed of, no counter-claim should be allowed against him" the Author mentions an exception

Yājñavalkya, Verse 10. (1)

A countercharge may be allowed in cases of delicts<sup>1</sup> and felonious crimes. 5

Mitākṣharā :—Kalahe, in delicts, in cases of defamation and assault, sāhaseṣhu, in felonious crimes, in cases of destruction of life by means of poison, weapons &c. (In such cases) when there is a counterecharge, it should be allowed against the complainant even while his own complaint is undisposed of. 10

It may be urged that even in such a case, the countercharge would not be a proper answer inasmuch as it does not meet the case of the plaintiff, and thus (in fact) there being another *pratijñā* or complaint, it is equally impossible to go into a simultaneous proof (of both the charges). To this the answer is : True ; but here a counter-charge is not allowed with a view to a simultaneous proof, but for an abatement of the punishment, or for avoiding or preventing an excess of it ; for, where the complaint is, 'I was beaten or abused by him,' and the countercharge is 'I was first beaten or abused by him,' there would be a light punishment. As says Nārada<sup>2</sup> : "He who is the first to inflict an injury is assuredly guilty ; he who retaliates is likewise guilty ; but for the first, the punishment is heavier." Where, however, the assault etc. is commenced simultaneously for both, an enhanced punishment is avoided. Vide the text<sup>3</sup> : "When both parties simultaneously commence abusing or beating each other, and a difference (in degree) cannot be found, the punishment for both would be the same." 15 20 25

Thus, even if proof of simultaneity is impossible, still in cases of abuse &c. a counter-charge has a value ; in suits for the recovery of debts &c., however, it is simply useless. 30

1. कलह—violence; ईशद्विन्दनवैराग्यद्वन्द्व, ईशद्वन्द्व; Mr. Jhātīki.

2. Os. XV. 2.

3. Cf. Nārada Ch. XV. 8. Dr. Jolly's text reads the first quarter as

## Viramitrodaya.

The Author mentions the function of the plaintiff in the interval

## Yājñavalkya, Verses 9, 10 (1).

- Abhiyogam*, 'complaint', the accusation made by the complainant,  
 5 *anistirya*, 'without removing', i.e., is disposed of by the decision  
 resulting in success or defeat, against the complainant, the respondent,  
*na pratyabhiyojayet*, 'should not be allowed to counterclaim', i.e.,  
 should not be charged for a counter offence committed by him.  
*Anyena*, 'by another', while the accusation first made is not removed,  
 10 until its removal, the defendant should not be allowed to be charged.  
 The substance of the complaint laid should not be allowed to be  
 'changed', *viprakṛtyam*, distorted, i.e., the plaintiff or the defendant  
 should not be allowed to write otherwise.

- As regards the clause 'no counter-claim should be allowed  
 15 against him', in a mutual fight, in abuse, and in cases of serious  
 offences such as the abduction of women, homicide, and the like, and by  
 the use of the word *cha*, 'and', in cases of assaults and thefts, one  
 may file a counter-complaint. In an accusation such as 'I was  
 abused by him', 'I was beaten by him', one may state as by way  
 20 of an answer 'I was also abused', 'I was also beaten'. By the use of  
 the first *cha*, 'and', are included the grown up and the like. 9, 10 (1).

## S'ūlapāṇi

## Yājñavalkya, Verse 9.

- One against whom an accusation has been made, without giving an  
 25 answer, should not be allowed to charge the maker of the first complaint  
 with a counter-complaint, simultaneously more than one trial being  
 impossible.

- The complainant also must not file another complaint against  
 the respondent, as on account of the abandonment of the first complaint,  
 30 there may be the danger of detriment to the sworn statement. The  
 allegation which has once been made should not be allowed to be  
 distorted by an allegation of a different kind, as there would be the  
 fault of variation in the pleading. (9).

- After laying down the rules for the plaintiff and the  
 35 defendant, the Author mentions the functions of the Presiding Officer  
 (of the Court) and his Councillors

Yājñavalkya, Verse 10 (2).

From both a security should be taken, (such as one) who would be competent to satisfy the object of the judgment.

Mitākṣharā :—Ubhayoḥ, from both, i. e. from the plaintiff and the defendant. (That which) in all suits (is) the object of the judgment or decree is *kāryanirṇaya*, the object of the judgment. The word *kārya* has been placed first under the rule 'Ahitāgnyādīṣhu.' The object of the judgment, moreover, is the payment of the amount decreed, and the payment of the fine. For that, *samarthaḥ*, competent, *pratibhū*, surety; he who becomes a substitute for him, i. e. in that cause, becomes like him, is a *Pratibhū*; (such a one) should be taken by the Officer presiding the Court consisting of Councillors.

If such a one is not possible, men should be commissioned to watch the plaintiff and the defendant, and the daily wages of these (guards) should be ordered to be paid by those (plaintiff and defendant). As says Kātyāyana<sup>3</sup>: "If, however, the plaintiff has no surety competent for the cause, he should be (kept) under a watch; and (he) should pay the wages to the servant at the end of the day."

Viramitrodaya.

After having stated the duties of the plaintiff and the defendant, the Author mentions the function of the head of the Court along with the Councillors

Yājñavalkya, Verse 10 (2).

Of the plaintiff and defendant who had appeared for (getting) justice, for entering upon the trial, a security should be taken, as even regarding the plaintiff, there being the possibility of his running away through fear of penalty. Of what kind? *Samarthaḥ*, 'competent' or able to meet the purpose of the decision, i. e., for the payment of the amount established, as also of the penalty. After the manner of the rule<sup>1</sup> *ahitāgni*, &c., the word *kārya*, has been placed first.

1. Pāṇini II. 2-37. आहितानि इति. In the compounds आहितानि and the like the *Niṣṭhā* formed words may optionally be placed first i. e. आहितानि, जानय इति.

2. Verse, 117.

Or for the object, i.e., for the decision to be given, a security should be taken. It may not be said, having regard to the order<sup>1</sup> of its statement, that the security to be taken is after the decision of the suit, therefore it has been stated that he should be one competent to satisfy the judgment. Or, for the object, which is the subject matter of the suit, such as the recovery of debt &c., for its decision, a security should be taken, (as) if the plaintiff runs away a decision would be impossible. For the absence of the security, however, Kātyāyana<sup>2</sup>: "If, however, there be no surety given by the plaintiff who has a cause for dispute, he should be kept under watch, and so guarded he should give wages to the guard at the end of the day". 'Guard', i.e., the messenger of the king. 10 (2).

## S'nlapāṇi.

## Yājñavalkya, Verse 10.

The Author mentions an exception; *kalahr*, 'sallets' e. g. slander, as also in charges of assault with weapons &c., 'I too was attacked with a weapon by him', such a counter-charge may (be allowed to) be made. In a complaint that 'the attack was made on me when I was quite innocent', in a counter complaint in the counter-charge, the fault of simultaneity by numerous complaints does not occur.

A surety should be taken who would be competent to keep the complainant and the respondent under restraint, until the decision of the proceeding. In the absence of a surety, he might change, so says Kātyāyana<sup>3</sup>. "If, however, there be no surety given by the plaintiff who has a cause for dispute, he should be kept under watch, and so guarded he should give wages to the guard at the end of the day." 'Guard', the royal watchman. (10).

It has been said that a surety should be taken by the presiding officer of the Court consisting of Councillors from the plaintiff and the defendant, who would be able to satisfy the object of the judgment; it may be asked what is that object of the judgment? Anticipating this, the author says

\* Page . Yājñavalkya, Verse 11.

When, upon a denial (by the defendant), a claim is proved, he (the defendant) should pay the amount claimed

1. वाचस्पत्येन १, e. since the rule regarding the taking of a security comes to be mentioned after the decision, following the order of its statement.

2. Verse 117.

(to the plaintiff) and also an equal amount to the king. One setting up a false claim should pay double the amount claimed.

Mitākṣharā :—Of the claim alleged by the plaintiff if upon a denial by the defendant the claim is proved, bhāvitāḥ, by the plaintiff by means of witnesses &c. and thus brought home to the defendant, then the defendant should, give the amount, dadyād dhanam, in dispute to the plaintiff and also an equal amount to the king, Rājñe cha tatsamam, as a fine for the denial. If, however the plaintiff is unable to establish (his case), then he himself becomes mithyābbhiyogi, a false claimant, and as such should give to the king, dadyādrājñê, double, dwiguṇam, the amount of the plaint abhiyogāt, i. e. the amount claimed in the plaint.

In the case of the plea of 'res judicata' and of 'confession and avoidance' this same rule should be applied. There, too, when the plaintiff is shown by the defendant to have set up a (false) denial, he should give to the king a fine equal to the amount in dispute. If, however, the defendant is unable to establish either the plea of *res judicata* or of the special plea then he himself should give double the amount to the king as for having set up a false plea, while to the plaintiff the amount claimed or in dispute. In an answer of admission, however, there is no fine.

This, however, has a reference only to the suits for recovering debts. It is not of universal application, inasmuch as special fines have been mentioned in (all) other (kinds of) suits, in their respective places, and also as it cannot possibly occur in suits where the subject-matter is other than money.

And although the rule<sup>1</sup> that 'a debtor should be made to pay by the king &c.,' has a reference to or applies in suits relating to the recovery of debts, we will particularize it there<sup>2</sup> only.

The same rule should even be used as having a reference to all (kinds of) suits. How? If upon the defendant's setting up a denial

1. Verse 117.

2. See Verse 42 further on.

of the claim it is proved by means of witnesses &c. by the plaintiff as against the defendant, then *equal to it*, *tatsamam*, i.e., to the very amount specified respectively in each (kind of) suit. The word *cha* is used to restrict the extent (of the fine). 'The amount should be paid to the king' is the (construction based on) repetition.

If the complainant is not able to bear out this complaint, then the rule laid down is that a double amount of that mentioned in each suit should respectively be paid by him as a fine for (being) a false complainant. Here also in the plea of *res judicata* and of a  
10 'special plea' the rule should be applied similarly as before.

### Viramitrōdaya

The Author mentions the procedure in regard to a defeated defendant or plaintiff

#### Yājñavalkya, Verse 11.

15 *Nināṣate*, 'upon a denial,' of a true claim by a false statement  
*bhāṣite*, 'when proved' by witnesses also the matter being brought home  
the defendant should give to the plaintiff the amount which is the subject-  
matter of the suit. *Rajñe cha tatsamam dhanam dadyāt*, 'to the king  
also he should pay an amount equal to it' in the form of a penalty. A  
20 plaintiff, setting up a false claim, should pay to the king an amount  
double that in dispute. By the use of the word *cha*, 'and,' the Author  
adds another penalty in cases of slander &c. Here Manu: "Upon a  
denial of the claim, if it is established by evidence, he should be ordered  
to pay the debt to the creditor and a small fine according to capacity (52).  
25 He, to the extent to which he denies the claim, or to the extent to  
which he speaks falsely; those two adepts in illegality should be  
punished with a fine double of that" (50). Here, moreover, the deter-  
mination of the punishment of those who deny the claim, in equal or

1. Words have the force of *प्रति* or *स्राति* i.e. of having a wider surface covered by the connotations than is indicated by the denotations. In this connection the distinction between *विषय* and *परिसंख्या* may be compared. In 'वृक्षवृक्ष नखा मत्स्याः' all animals other than the वृक्षवृक्ष are excluded (*स्राति*), while in 'समे देशे यजेत' it is not so much the *exclusion* (*स्राति*) of विषयदेश, although that may be the ultimate result, as the selection of a समदेश (*प्रति*) that is aimed at. So Vijnāneśwara says that by the use of the word *cha*, Yājñavalkya means to lay down that an amount equal in amount to that in dispute, and not more or less, should be levied as the king's fine.

2. Ch. VIII verses 52 and 60.

double the amount should be made by a consideration of the caste, age and wealth, of these. As the Author has said: "After taking into consideration, the country &c." (II).

### S'ulapāṇi

#### Yājñavalkya, Verse 11.

5

In a plaint regarding the payment of money, one who has filed an answer of denial, when the claim has been established against him by means of witnesses and the like, the debtor should pay the amount to the creditor. To the king also he should pay an equal amount as penalty. In the case of a denial and an admission, Vyāsa has mentioned half as penalty: "After denial, when the plaintiff voluntarily admits the claim, that should be known as an admission; for that a half penalty has been declared". Other penalties in particular cases, should be ascertained from other Smṛtis by regard to the existence or non-existence of the element of intention as an ingredient in the offence.

15

One who offers a false complaint should pay double the amount of the complaint to the king. In regard to the *Sūdra*, Nārada states a special rule: "Those of the *Sūdra* order who file a false complaint against the twice-born, the king should cut out their tongue and impale them upon a cross." (11)

20

By the text: 'Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute is to be established,' it has been shown that (some) time should be allowed at the stage of filing the answer; the Author mentions an exception to this

25

#### Yājñavalkya, Verse 12.

In charges regarding felonies, theft, assault, and cow-killing, and in complaints about risk to life and property, and in complaints against defamatory imputations, as also in cases concerning women, the parties must even immediately be asked to plead. In other suits time has been allowed under the discretion (of the court).

30

Mitākeharā:—Sāhasam, a felonious crime, by means of poison, weapons, and the like, the killing of animals and doing like

1. Compare this with Nārada I. 45.

2. Āchārādhyāya Verse 368.



licks, touches by the end of the tongue or rubs,—an instance of a deformity in action.

Asya lalâṭam swidyate, whose forehead perspires, becomes smeared with drops of perspiration. Mukham

- 5 Characteristics cha Vaiwarnyam, countenance also has a of an unfit person. changed colour, a changed colour i. e. palour or shadiness; eti, assumes,<sup>1</sup> are instances of bodily perturbation. Parisuṣhyatskhaladwākya, who has a stammering and incoherent speech; parisuṣhyat, stammering with a stutter;  
10 skhalat, incoherent. He whose speech is of such a sort. A man of this description. Viruddham, inconsistent, the last contradicting the first; bahu bhāṣate, talks much; is an instance of perturbation in speech. To the words, wācham, of another, he does not attend by giving a reply; nor does he attend to the gaze, chakṣuḥ,  
15 of another by a responsive look—a sign of mental deformity. Tathā Oṣṭhau nirbhujati, moreover bites his lips, i. e. twitches—is also an instance of a bodily change.

- This, however, has been mentioned to indicate a probable existence of a defect; not as a positive mark of the (existence of) defects  
20 as it is difficult to appreciate the distinction between a natural defect and a defect caused by a special circumstance. And even if perhaps a skillful person draws a distinction, still that (by itself) will not be a sufficient cause for a dismissal of (the suit). No one would set about actually performing the exequial rites by merely observing (the) signs  
25 (of impending death) in a dying man. Similarly, even if it be known from the signs that the party would be defeated, still, that (by itself) is not sufficient to bring about (an actual) defeat.

#### Viramitrodāyṇ.

- The evidence to be adduced by the plaintiff has been stated  
30 before. Now, what cannot be adduced by him, and which is to be inferred by the Chief Judge, the Councillors and the rest, viz. inferential evidence otherwise called the *pratyākālita*, the Author points out

Yājñavalkya, Verses 13, 14, 15.

- Mano-rāk-kāya-karmābhir yaḥ swabhārad, 'who in mind, speech,  
35 body and action exhibits by his own movements (manners) i. e. without

1, Lat: goes or reaches.

any other cause possibly due to disturbance etc., *vikṛtim* 'a change,' 'a perturbation,' i. e. *yāti* 'goes', i. e. reaches; *ea*, 'he'; *abhiyoge*, 'in a complaint' i. e. in a dispute, *sākṣye*, i. e. 'testimony' i. e. in a proceeding as a witness; *duṣṭaḥ parikīrtitaḥ* 'known as defective and unfit', in the *Sāstra*. Therefore a complaint made by him or a testimony given by him is not taken as proof. This is the meaning.

The Author mentions the perturbation itself: *Deśat*, 'from a place' i. e. from the place of his own residence, *deśāntaram* 'to another place'; *yāti*, 'goes', in other words, in regard to his residence does not anywhere exhibit stability; *sṅkṣiṇi*, 'lips' i. e. border of his lips, by a repetition i. e. often and often with the tip of his tongue; *ledhi*, 'licks', i. e. rubs. *Aya*, 'of him,' i. e., of this defective person, *lalāṭam*, 'forehead,' *śvidyate*, 'perspires,' is saturated with perspiration. *Mukham cha*, 'mouth also'; *vaivarṇyam*, 'changed into non-colour,' i. e., palour, *eti*, 'attains' i. e. reaches. *Parīṣuṣhyat*, 'dry' i. e. the mouth becoming dry, *akṣalat*, 'stammering' i. e. incoherent; one who has this, is that. Thus it is a *Kārmadhāraya*, 'compound.' *Viruddham*, 'inconsistent,' i. e. the prior and the succeeding portions mutually contradictory; *bahu*, 'much,' much more than is useful, *bhāṣate*, 'speaks,' i. e. utters. *Wāk*, 'speech,' to oneself, words addressed by another; *chakṣuḥ*, 'eyes' of another bent towards one's gaze. This is a *dvandva* compound indicating as if it were a single object; *Na pājayati*, 'does not respond,' i. e. does not meet by a return speech or by a response in gaze. *Oṣṭhan*, 'lips,' *nirbhujate*, 'bites,' i. e. distorts. Of these perturbations the mental &c. may be inferred according to the local conditions of each. By the use of the words, *cha*, 'and,' *api*, 'even,' *atthā*, 'and also' is intended to indicate that "Although asked by many to speak, does not speak, and does not prove what he has stated; or who does not know what is the first point, and the point next following; and a one fails in the suit. (57). Having declared 'I have witnesses who know,' when asked to point out, who does not point out; the officer of the law-court, on (account of) these grounds, may declare him also to be non-suited." (58). These and others stated by Manu<sup>7</sup> and others are also to be included. (13, 14, 15).

### Sūlayāgi.

The Author mentions the characteristics of a faulty person in the *pratyākālita* part

Yājñavalkya, Verses, 13, 14, 15.

*Wākchakṣuriti*, 'speech, gaze &c.', to the speech of another, does not respond by a reply, and also another's eye, he does not meet by

- looking back *Nirbhīyāti*, 'hites', i.e. distorts, exhibits a perturbation; The meaning is, is not able to cover these. As in the Rāmāyaṇa: "Although covered in the outward form, it is not possible to be covered; indeed from its force it exhibits the internal feeling of men." 'Outward form' i.e. the bodily movements. The mouth, in the form of a changed colour and the like, the mental perturbation is inferred from the bodily change. These movements from place to place and the like are indicative of a defect (13, 14, 15).

### Yājñavalkya, Verse 16.

- 10 He who tries to substantiate a doubtful claim independently (of the means of proof), he who absconds, as also he who when summoned into the court does not say anything, is considered to be a false litigant and punishable as such.

- Mitākṣharā:—Moreover, sandigdham artham, a doubtful claim, even when not admitted by the (defendant) debtor, yaḥ swatantraḥ, who tries to substantiate independently of the means of proof i.e. by confinement, arrest &c., sa hīno daṇḍyaś'cha, he is considered to be a false litigant and also becomes punishable as such. Likewise he who after himself having admitted a claim, or after a claim was established by means of proof, absconds niṣpatet, when asked (to pay). He, moreover, against whom a claim has been filed and who even when summoned, āhūto, by the king into the court, does not say anything. He also is considered a faulty litigant and punishable as such. This is the construction.

- 25 As this verse has been introduced by the text<sup>1</sup> "is known as defective and unfit to be a complainant or a witness" it might be supposed that this verse is intended simply for detecting a faulty litigant (without more), so the word *daṇḍya* (punishable) has been used. Moreover, from the text<sup>2</sup>: "even if one makes himself amenable to punishment as guilty, he is not liable to have his suit dismissed" it has been shown that a party does not lose his claim. Intending to avoid such a conclusion here, the author has used the word *hina* (faulty).

1. Verse 15 above p. 691 ll. 22-23.

2. of Nārada II. 25, see above verse (9) where the full text is cited.

## Viramitrodaya.

Some deformities, although indicative of defectiveness, may even affect one who is not punishable ; so the Author says

## Yājñavalkya, Verse, 16.

*Sandigdham*, 'doubtful', i.e., not decided in his favour by the investigation, *artham*, 'claim', and therefore also *swatantraḥ*, 'independently', i.e., irrespectively of the certificate of success to be issued by the investigating authority, *sādhayet*, 'tries to secure', i.e., secures to himself ; *yaścha*, 'he also', who when challenged for an inquiry, *niṣpatet*, 'absconds', i.e., from the seat of investigation runs away. *Yaścha*, 'he also', *āhūtaḥ*, 'summoned', does not speak anything, either in support of his side, or detrimental to the other side, *sa*, 'such a one', *ātinaḥ*, 'a false litigant', i.e., a faulty one, and by reason of the offence of executing a claim under a doubt, 'is declared by the Smṛtis also 'to be punishable by the king', *rājā dāḍyaścha smṛtaḥ*.

By the first (use of) *cha*, 'and', are included those who do not attend at the place of inquiry. By the second (use of) *cha*, 'and' is included one who when unable oneself, who does not appear at the trial through a deputy. By the (use of the) third *cha*, 'and' is indicated that he should be compelled to pay what is in dispute.

These deformities, moreover, not likely to be proved by any other than one who is a thorough expert, are only means of indication of a disturbance. Otherwise, the possibility of a perturbation may here be taken as conclusive. A decision by regard to these is called among the people a direct<sup>1</sup> deliberation. (16).

## Sūlapāṇi

The Author states the characteristics of a defeated party

## Yājñavalkya, Verse 16.

If in a claim which is under a doubt one recovers independently of the (prescribed) means ; *niṣpatet*, 'absconds', i. e. without informing goes to another village ; after he is brought for being questioned, when asked 'what have you to say', speaks nothing whatever—these three as false litigants are to be punished as such. Nārada<sup>2</sup> however mentions five varieties viz : "One who changes his pleading, one avoiding a trial, one failing to appear, one who does not file an answer, and one

1. *प्रत्यक्षविचारः* See the remarks of the *Milākshurā* above on p. 678, l. 1. quoted in the note on page 679. *प्रत्यक्षविचारः*.

2. Ch. II. 33.

who absconds after he is summoned, are five varieties of a faulty litigant." "The absconder, after three fortnights; one who keeps silent after seven days; and one avoiding a judicial investigation, after a month, and an incongruous deponent immediately (are declared as vicious or faulty)." 16.

Now, where two men simultaneously go to the officer of justice, each as plaintiff *e. g.*, where, a certain person having obtained land by gift, after enjoying possession of it for some period went out on account of business into another country along with his family; and a certain other person also obtained the same land by a gift and after enjoying possession for some time, went into another country. Thereafter both returned together and there was a quarrel each saying "this is my land, this is my land," and when both go simultaneously to the officer of justice, the question would be on whom should the burden of proof lie? Anticipating this, the Author says:—

### Yājñavalkya, Verse 17.

When there are witnesses for both sides, those for him who claims priority should be taken first; and if the first claim be invalidated, then those (*i. e.*, the witnesses) of the next claimant should be examined.

Mītākṣharā :—Ubhayataḥ, *for both sides, i. e.* for both the litigants. Witnesses, sākṣiṣhu, *i. e.*, when they are available. The witnesses for him who claims priority, sakṣiṇaḥ pūrvavādiṇaḥ, *should be examined; i. e.* one who says that he got (it) by a gift and had enjoyed at a prior date. A Pūrvavādi, a person claiming priority, is not one who first makes a complaint. The witnesses for such a one should be examined.

When, however, another person says:—"True it is that this man first got it by gift and also was in possession, but the king gave this very field to me after purchasing from this very man, or that this man gave it to me after having obtained by gift"—then, the case of the first claimant becomes invalidated as it cannot be proved, and

when the case of the first claimant is invalidated, the witnesses should be examined of him who says that he got

\* Page 14. a gift at a later date and was in possession (since).

This explanation<sup>1</sup>—alone is proper. It would

not be proper to put the following interpretation, *viz.*, if the answer 5  
is by denial, the witnesses of him who claims priority are examined ;  
while in the answers of *res judicata* and *special plea* if the case of  
the first claimant be invalidated then would come in the witnesses of  
the next claimant. The same import having been laid down in the  
text—'Next, the plaintiff should immediately have written &c.',<sup>2</sup> 10  
there would be the fault of repetition.

The first (mode of) explanation has also been brought ont  
clearly by Nārada<sup>3</sup> who after observing—"In the case of a denial,  
the proof rests on the plaintiff, while in a 'special plea', on the 15  
defendant. For establishing a *former judgment* the (production of  
the) decrea would constitute (sufficient) proof," says:—"When two  
persons quarrel for a point, and both have witnesses, the witnesses  
of him who sets up a prior claim shall be heard."

This rule has been specially mentioned as it differs from the  
rules of procedure for suits in general.(17) 20

### Viramitrodaya.

"Then the plaintiff should cause to be written the means of proof  
of the allegations in the plaint", as it has been said. There, when the  
means of proof exist for both the plaintiff and the defendant, whose  
should be taken up (first) for consideration? So, the Author states the 25  
rule here

### Yājñavalkya, Verse 17.

*Ubhayato*, 'of both' i. e. of the plaintiff and also of the defendant,  
when witnesses and like other means of proof exist, *pūrvatādinaḥ*, 'of  
him who filed the plaint,' the witnesses and like other means of proof 30  
should be admitted ; such is the general rule.

1. i. e. taking both as plaintiffs and another as पक्ष and another as पक्ष.

2. Yājñavalkya 7 (2) page 672 above.

3. Oh II. 163.

- Here, the Author states an exception : When the first elde, *i.e.* in the form of the plaint, *adharibhāte*, 'is invalidated,' *i.e.* is proved to be weakened as compared with the answer, either on account of a stronger reason, or by reason of the plea of *res judicata*, the witnesses, &c., of the respondent happen to be accepted. This moreover has been particularly elaborated before already. (17).

## S'ūlapāṇi

## Yājñavalkya, Verse 17.

- One says, 'mine is this land by (right of) purchase'; another also says 'mine is this land, by (right of) purchase'; thus when the answer of a special plea is equal, and witnesses of equal kind are adduced, the witnesses of the party lodging the plaint are to be accepted, and not of one who sets up a plea of priority.<sup>1</sup> Such an interpretation is proper as by regard to the text: "In the case of a pledge, a gift or a sale, however, the prior transaction preponderates," there would be the fault of repetition if the first claimant be invalidated by not adducing a stronger reason to an answer, the witnesses of the respondent should be taken. By the use of the word witnesses, are included documents and the like. (17).

20

## Yājñavalkya, Verse 18.

If a dispute is accompanied by a wager, then the defeated party should be made to pay a fine and the amount of his wager (to the king), and also the amount in dispute to the judgment-creditor.

- 25 Mitākṣharā :—Moreover, if a dispute, *vivādo*, *i.e.* a judicial proceeding, be *sapaṇaḥ*, accompanied by a wager,—stake is (the same thing as) wager; and that which contains this is one accompanied by a wager,—then *there*, *tatra*, *i.e.* in that proceeding which contains a wager, the defeated party, *hinam*, who has been described above, the king should make him pay a fine, *daṇḍam*, as also the amount of the wager laid by him; and to the (judgment-) creditor the amount in dispute, *daṇḍam*.

1. It appears that S'ūlapāṇi here differs from Mitākṣharā where mere priority in lodging a complaint is not given preference to a prior existing right (see text. p. 13. II: 28-29). पूर्वस्थितिकाले मया प्रतिपद्यितुमुपयुक्तं चेति यो वदति असौ पूर्ववारी, न पुनर्यः पूर्व विदेयकाले ।

2. See further Yāju, II. 23.

Similarly where one being under the influence of anger, makes a stipulation thus :—"If I am defeated, I shall pay 100 *panas*", and the other (side) does not make any stipulation, then also a judicial proceeding is set in motion ; and when it is commenced, and if the person making the stipulation loses, then he himself should be made to pay a fine together with the sum stipulated. The other (party), however, if defeated, should be made to pay the fine, and not the stipulation as the text particularises it (*i. e.* his stipulation) as for one's own. 5

Where, moreover, one stipulates 100 and the other 50 only, there also in case of a defeat each should be made to pay respectively the amount stipulated by him alone. By the text "if the suit is accompanied by a wager" the Author has indicated (the existence of) a suit without a wager also. (18) 10

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#### Vīramitrodaya.

15

Generally, it is only when the means of proof for both exist that a suit with a wager comes about. By regard to this, the Author mentions the part to be performed by the defeated party in a suit with a wager

#### Yājñavalkya, Verse 18.

20

As characterised above if a suit exist, then in a trial with a wager, the investigating officer should compel the defective party who loses, to pay to the king or to the opposing party respectively as the case may be, viz., to the king, the penalty consequent upon the defeat ; to the opponent the amount which was the subject matter of the suit, and his own wager, viz., the subject matter as well as the amount. By (the use of) the word *tu*, 'however', in a suit without a wager, is excluded the payment of wager. By the first (use of the word) *eva*, 'only' is excluded the payment of the wager laid by the other party and not agreed to by himself. By the second, and accompanied by the expression *dhanine eva*, 'to the judgment-creditor only' is excluded the payment of money in cases other than those involving a money claim, such as slander, &c. The first two *cha*'s are intended to include the payment of the penalty and the wager which are not payable. The last *cha*, 'and' is indicative of payment of all the three together, viz., the penalty, &c. (18). 25 30 35



## S'ūlapāṇi

## Yājñavalkya, Verse 18

- 5 "If I am defeated on a footing of equality, then as an additional penalty due for a defeat, I shall pay so many *papas*," thus where the defendant stipulates with extreme boastfulness, that is (known as) a suit with a wager. In such a case, the penalty for a defeated party, as also the wager laid by himself, should be caused to be paid to the king, and also the amount in the suit to the creditor. (18).

## Yājñavalkya, Verse 19.

- 10 After discarding all circumvention, the king should decide disputes according to the actual facts; for even a real claim (based on actual facts) if not properly presented is likely to be lost in a judicial proceeding.

- 15 Mitākṣharā:—Moreover, *chṛālam*, circumvention, what has been wrongly said; *nirasya*, after discarding, after throwing off; *bhūtena*, according to the actual facts, in pursuance of the real state of facts, a king should bring disputes to an end, *vyavāhārāṇ nayed-antam nṛpaḥ*. Since, even a real claim, *bhūtamapi i. e.* a true case, *anupannyastam*, if not properly presented, *i. e.* if not properly  
20 pleaded, is lost, *hiyatê*, *i. e.* suffers a defeat in a judicial proceeding, *vyavahārataḥ*, at the trial on account of witnesses &c.

- Therefore the actual facts should be found out. The presiding officer of a Court along with councillors, by gentle persuasion and such other means, should try in such a way that the  
25 plaintiff and the defendant would speak the truth only; (for) in that case the decision would be given regardlessly of witnesses &c.

- If, however, it is absolutely impossible to find out the real facts, (then) in that case, the second course is that the decision should be given by examining witnesses &c. As has been said':—  
30 "It (*i. e.* a legal proceeding) is said to have two courses, as it is capable of being in pursuance of facts, or founded on error. A fact is that which truly embodies the actual events. An error is what has been erroneously deposed to."

There a decision given in pursuance of actual facts is the principal course, that founded upon error is only secondary. In a decision based on (the evidence of) witnesses and documents, the truth may sometimes be followed, sometimes not, as it is possible for witnesses &c. to deviate (from the truth.) 5

\*PAGE 15.

### Viramitrodaya.

As a suit is regarded two-fold on account of the distinction of being with or without a wager, so also by regard to its being founded on truth, or on error, it is two-fold. For it has been said: "By reason of its being founded on truth or on error, it is said to have two courses. Truth is what is linked with facts; what has been declared by mistake, is error." Thus the word mistake here is merely indicative of a proceeding which is not in pursuance of facts. There, as far as possible, a trial should be observed only in pursuance of facts; so the Author says 15

### Yājñavalkya, Verse 19.

*Bhāṭana*, 'according to facts' in connection with the matter in issue by means such as peaceful negotiations &c. by the party speaking as to actual facts in the form of his movements or the actions of the other side by reference to dates, having discarded the statements in the nature of circumventions, *नृपो व्यवहारं नयेत्*, 'the king should decide disputes,' i. e. carry to their own results in the form of a decision. 20

At times a suit is likely to be decided even in pursuance of an error, so the Author says, *Bhāṭam*, 'actual facts,' i. e. a real fact although with proper connections such as witnesses &c., if not properly set out before the determination of success, in a suit to be managed, *hiyate*, 'suffers a defeat,' 'becomes impossible of accomplishment.' In such a case, the trial will only be in pursuance of an error. By the expression, 'even facts if not properly set out' are included by extension all transactions well known as being in pursuance of facts. 30

There, a transaction proved according to rules of Śāstra is as under: "One who abandoning a strong ground resorts to a weak one, would not be allowed to resort to it again after the members of the judicial assembly have reached the stage of success". When a law

1. By Nārada I. 29.

2. जपेऽवृत्ते i. e. have recorded their decision as to who should succeed.

3. Kātyāyana, Verse 221.

4. Nārada I. 62, 63.

suit has been decided, evidence becomes profitless, unless a document or witnesses can be produced who or which had not been announced at a former stage<sup>1</sup> of the trial. As the (fertilizing) power of rain is thrown away on ripe grain, even so evidence becomes useless when the suit has been decided.”

Popular usage in transactions, such as “If I do not go tomorrow, I am (to be considered as) defeated,” an agreement like this and others. (19).

### Sūlapāṇi

#### Yājñavalkya, Verse 19.

“Truth is what rests on true facts. Error rests on a mistake of facts”, vide this text of Nārada<sup>2</sup>, if real facts are clearly ascertained by means of other proofs, then whatever had been declared through error should be given up as not final, and by means of positively ascertained facts, judicial investigations should one conclude; as even actual facts if not put forth in a judicial court lead to a defeat; so Nārada<sup>3</sup>: “What through error is not declared, that even though it were an actual fact is lost at law; therefore, judicial trials should one investigate by regard to actual facts.” “Moreover by the king particularly by one who is anxious to maintain the (integrity of) law, by regard to the diversity of the human mentality, after discriminating the good from the not good”. (19).

“Even a real claim is lost in a judicial proceeding if not properly presented” the Author mentions an illustration of this text

#### Yājñavalkya, Verse 20.

Where the defendant sets up a denial and, it is not confined to one only of the many particulars written in the plaint severally, and the claim is (afterwards) proved in

1. Asahāya has the following note on this: “This wicked debtor owes me money, and although this is supported by witnesses and other evidence, he declines to give it. Therefore he must be produced in my presence before the King’s Court.” If the claimant says so, and does not produce his proof at the time of the evidence, but offers to produce afterwards, it cannot be admitted as evidence. But, if after making the statement, the claimant could not produce it owing to any accident etc., it may be offered, and it shall be accepted although the case had already been decided, and surties were offered and taken.”

2. Nārada I. 29.

3. I. 64.

one particular, he should be compelled by the king to pay the entire claim. He (the plaintiff) should not, however, be allowed to recover (from the defendant) what had not been alleged in the plaint.

Mitākṣharā:—Naikam, *severally*, many particulars, *e. g.* gold, silver, clothes &c.; likhitam, *written*, allegation made by the plaintiff; if the defendant *denies*, niñnuto, *i. e.* conceals the whole claim, then, if the claim is *proved*, bhāvitah *i. e.* the defendant is made to admit, the entire claim *i. e.* with regard to silver &c. (also) as alleged in the plaint should be caused to be paid to the plaintiff *by the king*, nrpeṇa.

Na grāhyastuaniveditah, *should not, however, be allowed to recover what has not been alleged*. What had not been alleged at the time of the first complaint, but afterwards is being informed by the plaintiff saying that it was formerly forgotten, *he should not be allowed to recover*, na grāhyaḥ *i. e.* to be (allowed to be) paid, by the king.

It must not be supposed, however, that this rule is merely textual<sup>1</sup>; the falsity of the defendant's denial as to one particular having been established, it leads to the possibility of (establishing) its falsity as to other particulars also. Likewise, the truth of the plaintiff's allegations having been established in one particular, it raises the probability of its being true in other particulars also. Thus, from this very text of the Lord of Yogis<sup>2</sup> supported as it is by the rules of Logic which is only<sup>3</sup>, another expression for 'the rules of probative reasoning,' the resulting rule (that comes to be established) is that the king should cause the entire claim to be paid.

And when a suit is being decided in pursuance of the rules of logic, even if the real facts stood otherwise, no fault would attach

1. वाचनिकम्—based on a text. *i. e.* its soundness can be established even by the test of logic as will be seen from the next sentence.

2. *i. e.* the sage Yājñavalkya.

3. तर्कावलोचनम्

to the judges deciding the suit<sup>1</sup>. As also (says) Gautama<sup>2</sup>, after stating—'Rules of logic are a means for arriving at a judicial decision. For getting at a decision with (the help of) it (logic), parties should be placed in their proper positions respectively,' he concludes<sup>3</sup> thus : 'therefore the king and the preceptor are blameless.'

Moreover it is not that the consequences of a (false) defendant being confronted in one particular extend only<sup>4</sup> to his testimony not being accepted (as a reliable one) because the text is that 'a party confronted in one particular should be made to pay the whole (claim) by the king.'

The text of Kātyāyana<sup>5</sup>, however, viz. "Even in suits involving several counts, as much amount as the creditor (plaintiff) establishes by means of his witnesses, so much only does he get", has a reference to (suits for a) paternal<sup>6</sup> debt payable by the sons and others. There the rule is that sons and others in their answers in a suit with reference to several claims saying 'I do not know', do not become guilty of perjury; (and) even if a claim is proved against him in one particular he does not become a false litigant, and so the rule—"where the defendant denies all the particulars &c." has no application there, as there is no concealment, and therefore no (scope for the application of the) rules of logic. The text of Kātyāyana<sup>7</sup> viz. 'Even in suits involving several counts &c.' is a general rule. Putting aside the 'false answer' which is the subject of a special treatise, the author treats it as an answer of ignorance.

1. It may also be thus rendered; Even if it were different from the real facts. 'यस्तुने। अन्वयत्वेऽपि ।'

2. Chap. II. 23-24.

3. Chap. II. 32.

4. एतावद् &c. i. e. only thus far, to this extent. It is not that from this text the incapacity would extend to the length of only the party's case not being accepted. The Author says that it extends further, viz. 'द्वेण सर्वं दायः'. The meaning is that in the case of false witnesses the only consequence is that their testimony is not accepted; whereas in the case of dishonest litigants, not only that their testimony is not accepted but that they are punished to the extent of the entire claim in dispute being thrown out.

5. Verse 473.

6. पित्रादिकृणविरयम् is a better reading and is adopted from Bālabhāṭṭi. See Bālabhāṭṭi page 24, l. 18. पुत्रादिदेवपित्रादिकृणविरयम् ।

It may be said that by the text<sup>1</sup> viz. "In suits for the recovery of debts and the like which are of a quasi-finite character, the amount of disputes being already ascertained, if the allegation is for a less or a greater amount, the claim does not succeed", Kātyāyana has said that in suits containing more points than one, if only one point or more points than one which are involved are proved by witnesses, the whole claim does not succeed. That being so, when only a portion is proved, from whers does follow the proof of the portion that is not proved ? 5

To this the answer is that where witnesses are produced as the means for proving the entire claim alleged in the written 10  
 plaint, there in case the witnesses deposit to a portion only or to much more than what was claimed then in such a case the whole claim does not succeed; this is the meaning of that text. Even there, from the wording of the text viz. "being ascertained...does not succeed", a doubt would even lie here as before and thus there is 15  
 scope for other evidence (means of proof), on account of the rule in the text<sup>2</sup> "after discarding all circumvention &c."

In the case of criminal complaints, however, the whole point alleged is considered as established even if only a portion is established by witnesses produced for proving the whole case; because crimes 20  
 and the like are considered as proved by so much proof, as also on account of the text of Kātyāyana<sup>3</sup> viz. "In complaints for cohabitation with women, crime, and theft, what is known as the point at issue is considered as established in its entirety if only a portion of the point in dispute is deposited to by the witnesses." (20). 25

### Viramitrodaya.

In the course of an exposition of the function of the king, the Author gives illustrations of trials based on facts, as also those influenced by mistakes

### Yājñavalkya, Verse 20.

30

*Likhitam*, 'written', in the plaint &c., the written allegations made; *naikam*, 'many', in more than one (particular), such as, gold, gems, clothes; &c., the defendant who *nihnute*, 'denies', i.e., conceals

1. Verse, 396.

2. Yājñ. II. 19.

3. Verse, 397.

the entire claim, he, *ekadeśe*, 'in one particular' such as, merely as regards gold or the like, *vidhāritāḥ*, 'proved', i.e., by means of witnesses, as &c., has been completely proved to have taken, *sarvam*, 'the entire', claim which is the subject matter of the complaint, *nyapeṇa*, 'by the king',  
5 to the plaintiff, *dāpyaḥ*, 'should he compelled to pay'.

This, moreover, in regard to one particular (item) of the plaint which was established, when other particulars have not been proved here as also in the case of a special agreement, that 'if even one particular is proved, I shall pay up the whole.' There, the first has connection with  
10 actual facts as may have occurred, the second is based on a subterfuge.

*Aniveditāḥ*, 'not alleged in the plaint', i.e., not set out in writing before. The particle, *tu*, 'however', has the sense of *chā*, 'and'. As to the part other than the one particular in regard to which the claim is proved, such as gems, &c., although not proved should not  
15 be ordered by the king to be paid. This also is an example of a trial connected with an error. Vide the text of Kātyāyana<sup>1</sup>: "Even when only a portion of the matter alleged has been deposed to by the witness, in charges of intercourse with women, heinous offence, and theft, the whole of the matter alleged shall be deemed to be proved." In cases of  
20 theft and the like, although proved in one particular, the whole is to be paid; so the Mītākṣharā. (20).

### S'ulapāpi

#### Yājñavalkya, Verse 20.

One, who of the many counts in the written allegations, such as  
25 gold, silver, copper &c., denies all, he, when proved as to one particular such as gold &c. all i.e. silver &c., he must pay. If when proved as to one particular, having ascertained the plaintiff's, he says "this other also was forgotten by me", such a one not having been written down at the time of the plaint, should not be admitted, and no royal penalty (20).

30 It may be said "Where the defendant sets up a denial, and the denial is not confined to one of the many particulars" &c. is a *Smṛti* text; so is also "In suits involving several counts &c." a *Smṛti* text. Thus there being a mutual conflict between these two *Smṛtis*, why are they not considered as unauthoritative as they are

opposed to each other? Why resort to (the rule of) adjustment? So the Author says:—

Yājñavalkya, Verse 21 (1).

\*PAGE 16. Where two smṛtis conflict, principles of equity as determined by popular usage shall prevail. 5

Mitākṣharā:—Where smṛtyoḥ, *between two smṛtis*, there is mutual virodhaḥ, *conflict*, there for the purpose of removing the conflict and determining the matter in issue nyāya, *principles of equity*, comprising general rules together with the exceptions, 10  
balavān, *shall prevail, i.e. (will) have force.*

From where should these principles be obtained? so the Author says:—wyawahārataḥ iti, *as determined by usage etc.*, obtained from general usage i. e. ancient usage as observed among the elders and as determined by the two tests of affirmation and 15  
negation.<sup>1</sup> Hence even in the present case establishment of the rule is the only proper test. Thus should be applied even to other cases the rule regarding the adjustment and the rule of option.

1. विषयस्य स्यात् see note 4 further on pp. 708-709.

2. Note that here विषयस्य स्यात्पराधी means विषयस्य स्यात्पराधाय.

3. अन्वय-व्यतिरेक—note these two terms, which are likely to recur often and have an important place in the rules of logic and also of interpretation. अन्वय predicates a constant and invariable concomitance of the middle term or हेतु and the major term or साध्य (हेतुसाध्ययोर्मित्यन्वयः) The familiar instance of this is:—यत्र यत्र धूमः तत्र तत्र वह्निः. 'Wherever there is smoke there is fire'—the invariable co-existence of fire with smoke is called in logic the relation of 'invariable Concomitance' or अन्वयस्यादि. Corresponding to and the opposite of the above is what is known as the व्यतिरेकव्याप्ति or an assertion of the concomitance of the absence of साध्य and the absence of हेतु e. g. यत्र यत्र वह्निर्नस्ति तत्र तत्र धूमोऽपि नास्ति "Wherever there is no fire, there is no smoke also." The student will find a fitting comparison with this in the (1) Universal A Proposition of the English Logic e. g. All *x* is *y* and the (2) converted A proposition e. g. All not-*x* is not-*y*, respectively. A cause or हेतु is said to be connected with its effect by अन्वयव्यतिरेकव्याप्ति when both the affirmative and negative relations between the thing to be proved and the cause that proves can be equally asserted; such a हेतु alone makes the argument perfectly sound and incapable of refutation. This process of arriving at the Vyāpti or universal proposition corresponds to the methods of agreement and difference in Mill's Logic. (*Apte*). The application of this in the context will be seen from the following illustration: The question is whether a particular usage is proved to exist or not. Instances of its affirmation and an entire absence of its negation or non-enforcement would prove the custom under the अन्वयव्यतिरेक texts.



To this general rule the Author mentions an exception

Yājñavalkya, Verse 21 (2).

The rule however is that the science of law is stronger than the science of politics.

- 5 Mitākṣharâ:—The science of politics e.g. the work of  
Auśanasa stands already excluded by the text  
An exception 'in conformity with the principles of legal  
to the general rule. science'; so the 'science of politics' referred  
to here is the one forming part of and incorporated  
10 in the 'science of law' and characterised as the science of polity.  
In the case of a *conflict*, virodha, between two smṛtis i. e. from the  
science of law and the science of politics (respectively), the science  
of law is stronger than the science of politics; this is the *rule*, sthitiḥ  
(lit.: position) i. e. limit. The meaning is that although in themselves  
15 there is no distinction between the science of law and the science of  
politics as the authority of both are of equal<sup>1</sup> (authority), still the  
principal subject (of treatment) being law, while politics having only  
a subordinate position, the science of law has force. The importance  
of *Dharma* has already been demonstrated before in the beginning of  
20 this treatise<sup>2</sup>. Therefore, in the case of a conflict between the  
*Dharmaśāstra* (science of law) and the *Arthaśāstra* (science of politics),  
undoubtedly the *Arthaśāstra* will yield; and there is no scope for  
any rule of adjustment or of option for a *Vishaya-vyavasthā*.  
(विषयव्यवस्था) or a *Vikalpa* (विकल्प).

1. Yājñ II. 1 p. 1. II. 13 & 14 above.

2. Or it may even be translated as, 'as both are the compositions of the same (author.)' समानकर्तृकतया ।

समान—equal, or it may also mean, same. The meaning is that even if the same author lays down two texts, one in the nature of a *parā* text and the other an *aparaśāstrā* text, still having regard to the fact that it is the *parāśāstrā* which is the *pramāṇa* or principal subject of treatment, the texts pertaining to the *parāśāstrā* will have force.

3. i. e. in the *Āchārādhyāya*. Introductory chapter I verses 1-9.

4. Note these two terms विषयव्यवस्था and विकल्प.

विकल्प (*Vikalpa*) means option i. e. the rule of option. विषयव्यवस्था means an adjustment of the several subjects by appropriating each to its proper place.

What<sup>1</sup> is the illustration for this (proposition)? Not certainly the text of Manu<sup>2</sup> viz.—“One may slay without

An ‘Objection. hesitation a desperado<sup>3</sup> who approaches (with a murderous intent) whether (he be) a preceptor, a child or an aged man, or a Brāhmaṇa deeply versed in the Vedas (351). 5 By killing a desperado (intent on doing harm), the slayer incurs no guilt, whether (he does it) publicly or in secret; (for in such a case) fury recoils upon fury<sup>4</sup>. (352). Also, “One should (certainly) kill on the field of battle a desperado who approaches with an intent to kill, even though he were a special scholar of the Vedas, 10 and thereby he does not incur the sin of a Brāhmaṇa-killer” and similar others are the *Ārīhaśāstra* texts.<sup>5</sup> “This expiation has been prescribed for unintentionally killing a Brāhmaṇa; but for intentionally slaying a Brāhmaṇa no atonement is ordained,” and

According to Sanskrit writers if there be a direct and clear conflict between two texts, both lose their binding character, and one is left to accept either at his option. There is also another course which is resorted to and that is by assigning the affirmative (अथ) and negative (अथवा) clauses to their proper and appropriate places and thus removing the conflict. An example will make this clear. “A Brāhmaṇa may eat flesh.” This conflicts with the general prohibition of flesh against Brāhmaṇas. Then follows the appropriation (विषयवस्था) viz. “a northern Brāhmaṇa may eat flesh—a Southerner must not.” The reader will note the two texts, an apparent conflict between which has introduced Verse 21.

A very good instance of विकर and विषयवस्था may be found in Yājñ II. 277 “शस्त्रावापते गर्भस्थ पान्ते चोत्तमो दमः । उत्तमो काष्ठधर्मो वाऽपि पुरुषस्त्रीप्रमाणे ” Commenting upon this विज्ञानेश्वर says पुरुषश्च स्त्रियाश्च प्रमाणे शीलहताद्येऽप्योत्तमो वा व्यवस्थितो वेदितव्यः । and this is further made clear by विज्ञानमठ्ठ in the सुबोधिनौ thus—शीलाचारवत्तः पुरुषस्य तथा स्त्रियाश्च माणे उत्तमसाहस एव दंडः । शीलाचाररहितपारस्तु माणे पयमसाहस एवेति विकल्पव्यवस्था ज्ञेया ।

It will thus be noted that either of these have a scope when there is a conflict. The Author here says that there is no room for resorting to either as there is no conflict at all.

1. From this clause down to p. 711, line 17 is stated the objection; or the पूर्वपक्ष.

2. Ch. VIII. 351-352.

3. आततायिन् This word has been translated as ‘an assassin’ in the Sacred Books of the East, but having regard to its wide connotation a desperado would be a proper rendering.

4. Note the gloss of Kullūka. शस्त्राद्वन्तुगतो मनुः क्रोधाभिपानिनी देवता इत्यमानगतं क्रोधं विवर्धयति । i. e. the violence of the assailant generates and fosters the fury of the person attacked.

5. Manu. XI. 89.

such others are *Dharmas'āstra* texts; and it is proper in the case of a conflict between the two, that the *Dharmas'āstra* should have force, (since), these two (kinds of) texts not being likely to be in (reference to) one subject, there would be no conflict, and the consideration of their force or weakness does not arise.

- Moreover, premising with the text<sup>1</sup> viz. "the twice-born may take up arms where the law is being flouted &c." and proceeding with the text<sup>2</sup> "in their own defence and in the defence of the *dakṣhiṇā*, in a battle-field, and in the protection of women and Brāhmaṇas; he who kills within the limits laid down by law, incurs no guilt." one is not amenable to the punishment for slaying in a fair fight an assailant as also one who is intent upon killing women or Brāhmaṇas (while engaged) in self-defence or in the defence of the *dakṣhiṇā*—wealth collected for distribution among the Brāhmaṇas assembled at a sacrifice—and (other) utensils used for a sacrifice, the text viz. one may etc. a preceptor, or a child or an aged man<sup>3</sup> etc. has been given as an explanatory<sup>4</sup> affirmation of the same<sup>5</sup>. Implying thereby that one may kill even the preceptor and others who are absolutely immune from being killed, when they attack with a murderous intent, what then of others? From the use of the words *etā* (or), and also of *api* (even) in (the text) "even though he were a special scholar of the *Vedas* &c." the inference is not (intended to be) suggested that the preceptor and others should be killed, as also from the text of Sumantu viz. "There is no guilt in killing an assailant (with a murderous intent) excepting (when it is) a cow or a Brāhmaṇa." and also according to the text of *Manu*<sup>6</sup> viz. "Let him not injure the preceptor, nor him who expounds the *Vedas*, nor the mother or the father; nor also the Brāhmaṇas, cows nor an ascetic." This text is used with a purpose (lit. meaning), inasmuch as it is intended to prohibit the killing of the preceptor and others (when they approach) as assassins, and not otherwise, as the prohibition of murder is

1. *Manu*. VIII. 349.2. *Manu*. VIII. 351.3. *i. e.* Chap. VIII. 349-350.

7. See above p. 709 l. 5

2. *Manu*. VIII. 350.

4. अर्थवत्.

6. In *Manu*. VIII. 350 (See above).8. *Oh*. IV. 163.

general is already deducible from the general principles (of law). Even the text "by killing a desperado the slayer incurs no guilt" is intended to apply to others than Brāhmaṇas. Since, (by the text) "an incendiary, a prisoner, one armed with a deadly weapon, a robber and one who causes the deprivation of land, wife, and wealth, these six are (known *Ātatāyinas*) desperados or felons" and also "one who is armed with a sword, poison, and fire, who is ready to utter a curse with hand uplifted, who kills by means of *A'tharvaṇa* charms, who is a traitor to the King, who violates a married woman, who is ever ready to prick a hole (wherever found) one should know these and all such others as desperados or felons (*Ātatāyinaḥ*)," the *Ātatāyinas* have been indicated generally. Therefore the result is that when Brāhmaṇas and also others are killed as assailants by inadvertance while being warded off by one acting in self-defence and having no intent to murder, in such a case a light expiation will be (sufficient) and no punishment from the King (will be necessary). Therefore another illustration should be cited here.

(To the above objection) the answer is: "As acquisition of a friend is superior to the acquisitions of gold or

\* PAGE 17

An Answer

land, so one should endeavour for his acquisition"

is an *Arthasāstra* text. "In conformity with the principles of legal science, and divested of

anger and avarice" is a *Dharmasāstra* text. There occurs a conflict of these two in some cases. As e. g. in a suit where the procedure is of a fourfold character; if success is secured to one party, acquisition of a friend would be made, but the *Dharmasāstra* would not be followed; while if success is secured to another party, the *Dharmasāstra* would be followed; but (it) would prejudice the acquisition of a friend, in such a case the *Dharmasāstra* has more force than *Arthasāstra*. Hence *Āpastamba* has shown the importance of expiation in the text. "This very same (penance is ordained) for him who when his *Dharmā* (duty) and *Artha* (gain) come into conflict, chooses the *Artha*." By the expression "This very same" the twelve years' expiation is intended.

1. Manu, VIII. 352.

2. I. 9. 24, 23.

3. See *Āpastamba* I. 9, 24, 20.

## Viramitrodaya

Indeed, when there is a conflict between two *S'āstra* texts, how is a suit based on facts to be disposed of? So the Author says

## Yājñavalkya, Verse 21.

- 5 *Vyavahārato*, 'as determined by usage', in the matter of a point in a law-suit, *Smṛtyoḥ*, 'between two *Smṛtis*', i.e., two texts of *Dharma s'āstra*, when there is a mutual 'conflict' *virodhe*, *tu*, 'indeed', *nyāyaḥ*, 'principles of equity', i.e., the principles of logic helpful in effecting an adjustment of the points at issue, *balavān*, 'shall prevail', i.e., shall determine. In short, whichever *Smṛti* is adjustable in a particular topic according to logical principles in that matter, that *Smṛti* is authoritative. By the word *tu*, 'however', has been excluded the power of *Smṛti*, when in conflict with *S'ruti*. As has been said<sup>1</sup>:  
10  
15 alone preponderates. On a conflict mutually *inter se*, however, what is in accordance with equity is authoritative."

- The use of the word *Smṛtyoḥ*, 'between two *Smṛtis*', is indicative of the texts of the same category. Therefore it should be understood that where between two *S'ruti* texts only; or two *Artha śāstra* texts only  
20 there is a mutual difference, principles of logical reason are decisive.

- By the use of the word *tu*, a second time, are excluded the *Purāṇas*. By this, when compared with the *Purāṇas*, the *Dharma-Śāstra* incorporating the *Smṛtis* is not (more) powerful. On the other hand, as with two *Smṛtis*, when there is a conflict mutually between a *Smṛti* text  
25 and a *Purāṇa* text, the greater or less power or weakness is determined by regard to the principles of logic, which are helpful in securing the subject of the plaint. (21).

## S'ūlapāṇi

## Yājñavalkya, Verse 21.

- 30 When a conflict arises between two *Dharma Śāstra* texts, the suit should be decided by following the maxim of "the general rule and the exception," Thus: "He<sup>1</sup> who enjoys without a lawful title, as by his father and three prior ancestors, the property cannot be taken away from him because it has descended through three lines of ancestors," and  
35 "He<sup>2</sup> who enjoys without title for ever so many hundred years. the ruler

1. See Nārada Ch. I, 91.

2. Nārada Ch. I, 87.

of the land should inflict on that sinful man the punishment ordained for a thief", of these two texts, one of *Dharmaśāstra*, and another of *Arthaśāstra*, when there is a conflict, the *Dharmaśāstra* text propounding proprietorship by a successive enjoyment for three generations (although) without a title, has force. It is in conflict with the *Dharmaśāstra* text laying down a punishment for possession without title eventhough for one hundred years. So Nārada<sup>1</sup>: "Where there is a conflict between a *Dharmaśāstra* text and an *Arthaśāstra* text, giving up the *Arthaśāstra* text, one should act up to what is stated in the *Dharmaśāstra*". (21)

It has been said above<sup>2</sup> that "Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute is to be established". What are those means? anticipating this the Author says:—

### Yājñavalkya, Verse 22.

Evidence has been stated to consist of a writing, possession, and witnesses. In the absence of any of these, the ordeal is said to be another (means of evidence).

Mitākṣharā:—That by (means of) which a thing is measured or discriminated is *pramāṇa*, evidence. That, moreover, is twofold, viz. human and divine. Of these *mānavam*, human evidence is (of a) threefold (character) viz. *likhitam*, *bhuktiḥ*, *sākṣinaḥ*. writing, possession and witnesses; so it has been laid down, *kirtitam*, by learned sages. Then (again), writings are of two kinds. A *Sūśana*, royal grant, and *Chirakam*, a scroll or deed, A Royal grant has been defined before<sup>3</sup>. A scroll or deed (is as) will be defined (hereafter)<sup>4</sup>. *Bhuktiḥ*, possession, means enjoyment by (actual) occupation. *Sākṣinaḥ*, witnesses, i. e., of the character and kinds to be described hereafter<sup>5</sup>.

1. Ch. 39.

2. Yājñ. II-7 (English Tr. p 672, lines 14-16 above).

3. Yājñ. I. 318. p. 530.

4. Yājñ. II. 84.

5. i. e., in Section V, "Of the Witnesses."

It may be said that a writing and witnesses may properly be (accepted as) evidence as they may be included. The four kinds in the *śābda*<sup>1</sup> mode of proof (*Pramāṇa*), as they of evidence, serve as a medium *i. e.* of expressing (the meaning of) words.<sup>2</sup> But how can possession be a mode of proof? To that the answer is that even possession when satisfying certain (specified) conditions will invariably and correctly measure the probative value of the sale and other transactions which are (set up as) the basis of ownership, and assist an inference (to be drawn), or in the absence of a direct inference, a conclusion may be drawn by implication, and thus it (*i. e.* possession) may be included either in an inference (*Anumāna*) or an implication (*Arthāpatti*) and be a (good) means of proof.

In the absence of any of all these three (modes of proof) viz : writing &c., the author has mentioned<sup>3</sup> the evidentiary value of any of the ordeals, the character and kinds of which will presently be described, subject to the conditions as to the kind, country, time and the (particular) thing. That ordeals are (to be accepted as) a mode of proof only in the absence of human evidence is inferable from this very text, as the nature and conclusiveness of ordeals are derived from traditional lore, *i. e.* Āgama-Texts. Hence where two persons simultaneously go to an officer of law in reference to a matter in dispute between them, and one adduces human evidence, while the other resorts to the divine test, in such a case the human evidence alone should be accepted. To the same effect is *Kātyāyana*<sup>4</sup> :—“If one (party) sets up human evidence and the other resorts to the divine test, in such a case the King should accept the human evidence and not the divine test”. Even so where human evidence is available for establishing (only) a portion of the principal point (at issue), even there the divine test should not be resorted to. Thus, in a suit where the complaint is that ‘having received a hundred at this rate, the defendant does not pay it back’ and upon a denial (of the claim by the defendant) there

1. One of the several *Pramāṇas*. The *Naiyāyikas* recognise only four viz. *pratyakṣa*, *anumāna*, *upamāna* and *śabd*. The *Vedāntas* and the *Mīmāṃsikas* add two more viz. *anupalakṣi* and *arthyavāc*, while the *Sāṅkhyas* admit only three viz. *pratyakṣa*, *anumāna* and *śabd*.

2. *शब्दभिन्नवक्तिः* = *शब्दस्य अभिन्नवक्तिः* &c.

3. *i. e.* in the principal verse of *Yājñavalkya*.

4. Verse, 218.

are witnesses for (establishing) the acceptance of the loan, but not for the (particular) amount or the rate of interest, and the plaintiff offers to prove his case by an ordeal, in such a case, inasmuch as under the rule (of procedure), viz., 'regarding proof of a particular portion only,' the particular proof about the amount and rate of interest follows (by implication), there is no scope for an ordeal. As has been observed by Kāṭyāyana<sup>2</sup>:—"Even if the human evidence offered by the contending parties cover only a portion of the subject-matter, it should be accepted, and not the divine test even if it (i.e., the divine test) be sufficient to cover the whole suit." As for the rule.—"The trial of secret offenders must (necessarily) be by means of ordeals", even this (test) is intended to govern those cases where human testimony is unavailable. As to what has been said by Nārada<sup>3</sup> viz. "(Where a transaction has taken place) in a forest, in a solitary place,<sup>4</sup> at night, or in the interior of a house, and in cases of heinous offences or of denial of a deposit, a divine test is permissible"; even that is (applicable) when human evidence is absolutely impossible (to be adduced). Therefore the general rule (that, naturally follows) is that a trial by ordeal is allowable only where human evidence does not exist.

An exception to this, however, has to be noticed<sup>5</sup> viz. "In trials concerning heinous offences of a long<sup>6</sup> standing or in the case of assaults or slander or concerning acts proceeding from violence, the ordeal itself are the witnesses."

Moreover a similar rule is found in some places about a writing, etc. As in 'determining rules laid

\* Page 18. down for *pāgas*,<sup>7</sup> the *S'reṇis*, and *Gaṇas* and other trades, the evidence (to be adduced) is

1. एकदेशविभाषितस्यायः also called एकदेशविहितस्यायः as e. g. चाक्रेण पुरीषे वा शिखे येन पशति साधो न गर्ह्यः इति । See the *Madhātva* on the *Sūtra* स्थानिवादशोऽजलिष्यो 1. 1. 56 Cf. the rule of 'Part for the whole' 2. Verse 219. 3. II. 30.

4. Dr. Jolly takes निर्जन as an adjective of अरण्य and translates "in a solitary forest", but see the gloss of Anubhāya on this:—"अरण्ये वनमध्ये पत्तने वा निर्जनप्रदेशे ।"

5. Kāṭyāyana, Verse 229. 6. Or it may also be interpreted as 'in protracted proceedings, in trials of heinous offences &c. the पञ्चमपाद and सप्तमपाद being taken separately. Cited as of Bṛhaspati in V. Mayasakha, see. p. 11, l. 14.

7. ग्रह and भणो, See Yājñ. II. 30 and Mīṭākṣharā where Vijñāneśwara thus defines.—ग्रहः—समुद्रः । भिन्नजातीनां भिन्नवृत्तीनामेकस्यानविशसितो संघातः । and भणो—नानाजातीनामेकजातीनामप्येकजातिकर्मवर्गीयिनी संघातः ।



writing and not an ordeal or witnesses<sup>1</sup>." Similarly<sup>2</sup>—"In suits regarding the right of door or way, or the right of erecting or making these, as also in suits regarding the enjoyment of a surface or watercourse, the most important (means of) proof is that of possession; and neither an ordeal nor the witnesses." So also<sup>3</sup>  
 5 "In suits regarding valid and invalid gifts, in disputes between a master and his servants, in cases of rescission of (the contract of) sale, and also where after purchasing a thing one does not wish to pay the price, in disputes (arising out) of gambling (with dice) and  
 10 betting (with animals), wherever a dispute arises in any of these cases, witnesses have been prescribed as the means of proof, and not an ordeal or a writing."

### Viramitrodaya

As to distributing the relative strength or weakness of human and  
 15 divine evidence as means of proof, the Author proceeds

### Yājñavalkya, Versa 22.

*Likhitam*, 'a document', i.e. a writing capable of helping the determination of the point in dispute; *dhakṭh*, 'possession', i.e., the occupation of the village, &c., the subject-matter of the dispute;  
 20 *adkṣhiṇo*, 'witnesses', as the Author will describe hereafter.

By the use of the word *cha*, 'and' the Author adds the syllogistic reasoning otherwise known as *Pratyākhalita* as another means (of a decision). Thus fourfold means of human evidence 'has been laid down', *uchyate*, by scholars, and recommended to be followed. The  
 25 afore said *cha*, follows here also; thereby the oaths are other-worldly means but distinguishable from ordeals as stated by Nārada<sup>4</sup> is added here also. (22).

### S'ūlapāṇi.

### Yājñavalkya, Versa 22.

30 These three means of proof, in cases of recovery of debts and like others, in the absence of documents &c. of the nine ordeals such as the Balance and the rest, any one is (regarded as) the means. Their strength and weakness are stated by Kātyāyana.<sup>5</sup> "Divine means of proof is not permitted, when witnesses exist; so also when there is a document,  
 35 neither ordeals or oaths".

1. Kātyāyana, Verso 225.

2. Kātyāyana, Verso 226.

3. " " 227, 228.

4. See Ch. I, 30 and Ch. II, 30.

5. Verso 223.

As possession is determined in the form of an inference, the use of possession is characterised as inferential. So even Brhaspati<sup>1</sup>, "Witnesses, documents, and inference, thus human evidence is regarded as three-fold. Divine evidence has been stated to be nine-fold beginning with the Balance and ending with Dharma. But the mention of possession is indicative of greater force than document". (22).

When there is evidence on both sides, and when there exist no circumstances which would help in discriminating the strength or infirmity of either, (a question might arise) how should the strength of several proofs adduced by the plaintiff and defendant be determined? So the Author says

Yājñavalkya, Verse 23 (1).

In all civil disputes regarding property, evidence adduced in support of a later transaction preponderates.

Mitākṣharā :—In disputes for payment of debts, and others in all civil disputes, sarveshu arthaviwādeṣhu, later transaction, uttarā kṛiyā—that which is established is a Kṛiya, i. e., investigation or proof. When the evidence in support of a later transaction is established, and it preponderates, balavati, the party setting it up becomes successful; and (in such a case) even if the allegation in the plaint be established, the party setting it up is defeated. As e.g. where a certain person establishes a loan by proving receipt, while the other party proves its non-existence by repayment, in such a case where the receipt and payment back are (duly) established by (proper) evidence, this (evidence of) payment back has force and the party who sets up repayment succeeds. Similarly, where after first taking (a loan) at two per cent. a party acknowledged

1. Ch. V. 18.

2. अर्थविवाद—This has been rendered by Mr. Mandlik as 'money-disputes.' Having regard, however, to the proper meaning and scope of the expression here, it would not be an accurate translation. An अर्थविवाद is a dispute regarding title to or possession of property and the property may be moveable or immovable. This has been made clear by the author himself in his gloss on Yājñ. Verse (2) see. Sanskrit p. 111. 5. सर्वेष्वर्थविवादेषु, मय्युक्ततेषु'. An अर्थविवाद is used in opposition to a साहसमिमेय, मय्युक्तमभिमेय or any such suits the origin of which is in some threat or similar act and not in a substantive claim to property.

- (to pay) at three per cent., in such a case even when there is (good) evidence for both the facts, the acknowledgment at three per cent. has force. Because the general rule is that of two contradictory facts unless the prior fact is refuted, the truth of the later one does  
5 not become established, as it comes later (in order). It has also been said "a later fact is not established, unless the prior one is refuted."

The Author mentions an exception to this (rule)

Yājñavalkya, Verse 23 (2).

- In the case of a pledge, a gift, and a sale, however,  
10 evidence in support of the prior claim preponderates.

- Mitâkṣharâ:—In (any of) the three suits concerning a pledge and others, proof of a prior claim alone preponderates. It is thus: when a man after mortgaging his only field with one, and after obtaining some loan, again mortgages it with another and obtains  
15 something, in such a case, it (i. e. the field) belongs to the first only and not to the second. So also in the case of gifts and sales.

It may be urged that there being no ownership (left) in the subject-matter of a mortgage, thereafter a second

- An Objection. hypothecation does not appear permissible;  
20 similarly, also the gift or sale of what has been (already) given or sold does not arise at all; and therefore that this text is (thus) meaningless.

To this the answer is, even when no ownership exists, and still when from ignorance or avarice

- The Answer. one has a mortgage made again (over the same  
25 subject-matter), in such a case the prior transaction alone has force. Thus it is proved beyond doubt that this text is based on reason.

Viramitrodaya.

- By the text: "When the first claim is invalidated, &c.", it has  
30 been stated that when the answer has greater potentiality, the evidence for the defendant is taken. There the potentiality of the answer consists in the greater strength of the evidence as exhibited in the answer, so the Author points out the (element of) strength in the evidence

## Yājñavalkya Verse 23.

*Sarveṣhu*, 'in all', *vivādeṣhu*, 'in disputes', where the subject matter is the recovery of a debt, of the evidences on the two sides, i.e., of the plaintiff and the defendant, set out by them each as the means of securing their points, between the two, that which is of a later period, has greater strength. Thus, where the statement of one is, 'a debt has been taken from me by him and he owes it', and the statement by the other is, 'Yes, indeed was taken, but it was paid off', there the evidence in support of repayment has a greater claim. Similarly, when the first loan was contracted under an agreement of a *Kākiṇī* as the rate of interest, but later on at the rate of a *Paṇa*, and that has been by some arrangement, in such a case, evidence in proof of the later arrangement has a greater claim. And thus, where money deposited with one has been deposited with another, there it should be understood that the bailment with the latter has greater force.

The word *eva*, 'however', is to be used as coming after the word *uttarā*, 'later'. Thereby, an equality of force of the prior one with it has been excluded. Similarly is the word *eva* in *pūrvāṇa*, 'prior only', is to be explained. In some places, in the place of 'in all civil, &c.', the reading is, 'prior in civil, &c.', *pūrvā tu iti*.

Here, the Author states an exception; *A'dhau*, 'in the case of a pledge', i.e., in a transaction of pledge, *pratigrahe*, 'in the case of a gift', and in the case of a sale also, the prior one of the same kind in each case has a claim in preponderance. The similarity, moreover, consists in the prohibition to dispose of at will, and the destruction of one's ownership. Thus where after a mortgage with one, a mortgage is effected with another, there, the first mortgage is stronger; also, where after an acceptance or purchase by one, another has resorted to acceptance &c. as a means for (acquiring) ownership, there the first acceptance, &c., is more forceful. This is the meaning in substance.

As against a mortgage, a transaction of acceptance as a gift, and the like, being destructive of the right of ownership, whether of a prior or posterior date is indeed stronger. Thus it should be understood that by regard to its being not obstructive of the free right of disposal by the owner as he likes, whether of a prior date or, of a posterior date, a mortgage which is obstructive of the free right of disposal by the owner

1. A quarter of a *Paṇa*.

2. In a transaction of a pledge, the freedom of disposal of the object of the pledge which remained with the owner before is restrained, and the right of ownership becomes extinct in the other two transactions.

according as he likes is more powerful. This very thing, says, Nārada in Ratnākara: "Having made a deposit with a mortgage with another, where one makes a mortgage, or sale there, the later transaction is more powerful." (23).

5

## Śulapāni.

## Yājñavalkya, Verse 23

'In all,' i.e. such as the recovery of debts and the like, the later transaction i.e. acceptance of loan &c. is stronger i.e. is entitled to be pursued. One and the same thing, was deposited with one under a  
10 loan and taking it from there, it was deposited under a loan with another, there, proof of the later transaction preponderates. In the case of pledges etc. however the prior one is stronger. That which is accepted as a gift is an acceptance (23).

While wishing to establish the evidentiary value of possession  
15 when accompanied by certain qualifying circumstances, the Author proceeds to mention other results which flow from a certain kind of possession

## Yājñavalkya, Verse 24.

Of him who while he sees his land being enjoyed by  
20 another (for twenty years) looks on and does not object, the loss of (the right to) land occurs after twenty years; of money (the loss takes place) after ten years (under similar circumstances).

Mitākṣharā:—Pareṇa, 'by another', i.e. 'by a stranger,  
25 by one having no connection (whatsoever); bhuḥyamānām, being enjoyed, i.e. either land or wealth; paśyataḥ abruwataḥ, of one who looks on and does not object,' i.e., does not prevent him; e.g. thus—"This is my land; you should not trespass"; of that bhumervimsativārṣhiki, of land (thus continuing) for twenty  
30 years, hânirbhavati, occurs a loss, caused by the enjoyment for twenty years without protest. Dhanasya, of wealth, however, (i.e. moveables) such as the elephant, horse etc. the loss occurs dasāwārṣhiki, after ten years.

Indeed this is not proper: Certainly ownership does not become extinct on account of non-protest,

(1) Objection. non-protest not being known either in popular usage or in *S'āstra* as a cause of extinguishing ownership, (just) as a gift or a sale is. Nor is ownership acquired by possession for twenty years; because possession is not the (means of) proof of ownership; also because (of the rule that) evidence (*pramāṇa*) does not create the matter to be established (*prameya*)<sup>1</sup> it (i. e. the *pramāṇa*,) has also not been mentioned among the circumstances giving rise to a title by ownership. For: (in the text) "A man becomes owner by inheritance, purchase, partition, seizure or finding. The additional (mode of acquisition) in the case of a *Brāhmaṇa*, is gift; in the case of a *Kṣatriya* gains of conquest, and in the case of a *Vaiśya* and *Sūdra* gains (by labour)", Gautama<sup>2</sup> only mentions these eight as the sources of title by ownership, (he does) not (mention) possession. 5 10 15

Nor would it be correct to say that this very text demonstrates a twenty years' possession as an originating cause of ownership. A title by ownership or

\* Page 19. (2) Objection. its origin are indicated (even) by general popular repute, and not (necessarily) by the *S'āstra* alone. This, however, will be more fully dealt with in the chapter on Partition. The text of Gautama is only intended as (laying down) a rule of limitation. 20

Moreover, the text<sup>3</sup> viz. "He who enjoys without a title for ever so many hundred years, the ruler of the land should inflict on that sinful man the punishment ordained for a thief." is opposed (3) Objection. 25

1. प्रमेय (*Prameya*) is that which is to be established; 'the point at issue.' प्रमाण (*Pramāṇa*) is the means of establishing the point at issue. The meaning in the text is that a *pramāṇa* or evidence can only indicate or prove something which is already in existence; it cannot create it; i. e. a *pramāṇa* cannot be the 'originating cause' of a *prameya*. अनुत्पादकत्वम्।

2. X. 38-40.

3. See Subodhini, p. 13. l. 12. and Bālabhāṭṭi p. 31. ll. 26-28. on this.

4. Bālabhāṭṭa and others ascribe this text to *Manu*. It is not to be found in the editions of *Manu*. It is, however, found in the *Nārada Smṛti*. I, 87.

to the theory that possession without title is the source of ownership. Nor also would it be proper to say that the text "He who enjoys without a title &c." is meant to apply to a possession without notice (to the owner), and the text  
 5 "Pas'syatobhravatah<sup>1</sup> &c." to possession with notice (to the owner). The text "he who enjoys without a title" being general in its statement. As Kātyāyana<sup>2</sup> also has said: "One who has forcibly taken away beasts, women, or men should not rest his case on possession (of these) nor his son also"; the rule has thus been  
 10 established, that moreover an extinction of title is not possible in case of a possession with notice as it is improbable that any cause of an extinction of title would (be suffered to) exist.<sup>3</sup>

Moreover, it should not be supposed that inasmuch as the evidence in support of prior acts preponderates in cases of pledges,  
 15 gifts, and sales, this (*i. e.* the present) text is intended to lay down by way of an exception the preponderance of the evidence of transactions later in date amounting to twenty years' possession in case of land, and ten years' possession in case of wealth (or moveables). Since in the case of these in reality a transaction itself is not possible, it is  
 20 only (that which is) one's own (property) that is fit to be pledged, given away, or sold; and there can be no ownership over what has been pledged, given away, or sold. Moreover a penalty has been laid down for a gift and acceptance of that over which he (*i. e.* the giver) does not possess ownership, thus<sup>4</sup>: "He who accepts (as a gift) that  
 25 which may not be given, as also he who gives it shall both be punished like thieves, and both made to pay the fine ordained for an offence of the highest degree (*Uttama-Sāhasa*)."<sup>5</sup> Moreover if this verse were to be (accepted as) an exception to [the rule regarding the three

1. *i. e.* Yājñ. II. 24.

2. Verse, 316.

3. The construction here is rather peculiar. The clause समसमेति etc. in l. 8. is to be taken as part of the objection already commenced and not as a separate objection. The construction here is typically terse—मिताक्षरा. The meaning would be fully brought out by the following complete statement of the component parts in their order:—समसमेति हनिरसंभवाः । हनिराक्षराणां वा । An extinction of title is not probable in the case of a possession with notice; because no one would allow any circumstance to exist or continue which would in the end lead to an extinction of title.

4. See Nārada Ch. IV. 12.

(transactions) viz. pledges etc.] the verse next following (i. e. No. 25) does not appear proper as an exception in the cases of *pledges*, *boundaries* etc. Therefore the extinction of (title to) land etc. does not appropriately follow at all. Nor is the cause of action lost. For in the text :—"Of him who neglects and stands by if a period as aforesaid is passed, the suit does not succeed," Nārada has mentioned the extinction of a *remedy* at law when there is laches and such laches is not accompanied by circumstancea explaining it ; he does not lay down the extinction of the *right* (itself). Similarly in the text "If the owner is neither an idiot<sup>1</sup> nor a minor and if his chattle is enjoyed (by another) before his eyes, the remedy by a suit is lost to him and the (adversa) possessor becomes entitled to the property." even Manu<sup>2</sup> has indicated the loss of remedy only at law and not of the title itself. The loss of the remedy at law would be in this way. The person in possession might say—"This man not being either an idiot, an infant or a minor, I have enjoyed (the property) in his presence without a protest for twenty years and there are several witnesses in (support of) this. If it was (a fact) that I was illegally in possession of his property, then why should he have stood by for so long a time ?" and here the (true) owner would have no answer. This even although he would have no answer as (indicated) above, an investigation on facts is still open—vide the rule:<sup>3</sup> "After discarding all circumvention, the King should decide disputes according to actual facts".

It may also be said : "Even though the title is not extinguished, nor (also) is the remedy lost, still there would be the *danger* of the loss of remedy, and in order to avoid this it has been laid down as an advice that one should not stand by. (To this) however (the answer is that) it is not so; for, possession (which is) within memory cannot be a cause of creating any apprehension as to the loss (of title); (and moreover) if the only object was to lay down the rule that (one) should not stand by, the use of the term *twenty* would be without a purpose.

1. Mark the following text of Nārada distinguishing, बाल, वीर्यद, and विदुः. गर्भस्थसदृशो ह्येव आस्यपादस्योपशिशुः । बाल आषोडशद्वयान्निगच्छ इति शस्त्रे ॥ १-३६ ;

2. Ch. VIII. 148.

3. Yājñ. II. 19 Page 700. ll. 10-14 above.



It may next be said that by the use of the word twenty, it is intended to lay down the rule that possession for more than twenty years (in itself) serves as a refutation of all objections regarding the defects or flaws in the document, as says Kātyāyana<sup>1</sup>; "Where  
 5 possession is enjoyed of property belonging to one who is competent, for (a period of) over twenty years and under a document, that document is (presumed to be) free from (all) defects." Even that is not so; for in that case the rule that after twenty years all objections regarding flaws in a document become barred, having a general  
 10 application, it would not be possible to set up an exception even in the case of pledges etc.<sup>2</sup> As says Kātyāyana<sup>3</sup>: "If a pledge is actually enjoyed as such for twenty years, it (i. e. the pledge) is proved by that document, (which then becomes) free from all (objections as to) defects." So also<sup>4</sup>, "After a boundary dispute is  
 15 settled, a document describing the boundaries has been ordained; its defects should be pointed out before twenty years (have elapsed)." By this, the text, viz. "(the loss) of money takes place after ten years" is also refuted. Therefore another meaning should be expounded for this verse.<sup>5</sup>

20 To this the answer is :<sup>6</sup> Here the loss intended to be indicated is that of the profits (or accession) of the land as well as of the wealth, not of the corpus itself, nor  
 The Answer. of the right of a suit at law. For, even if at  
 \* Page 20. law the owner gets (back) the land after twenty  
 25 years' possession without protest (by him), still he does not get a right to follow the proceeds, both on account of his own fault in the form of non-protest, as also on account of this text. In the case of a possession without notice, however, he (i. e. the owner) secures

1. Verse, 299.

2. i. e. to say, and thereby the text of Yājñavalkya II. 25 would be meaningless.

3. Verse, 300.

4. Verse, 301.

5. Here ends the objection which began with the words "नन्वेतद्व्यवहृतम्" on page 721, l. 1. above.

6. Vijñāneśwara draws the following सिद्धि after the above discussion. The reader will note this as a very good instance of a सिद्धि of the Sanskrit logic. Vijñāneśwara first gives a literal meaning of the verse at p. 18 ll. 25-27. Then he starts a discussion from p. 18 l. 28 and draws the conclusion or सिद्धि on p. 20, ll. 15.

the right to follow the proceeds also, under the text, *Paś'yato &c.* (Yājñ. II. 24), and also in possession with notice and protest, under the text, *Abruvataḥ &c.* (see above p. 720. l. 19-23), before twenty years, he succeeds (even) when there is possession without protest, as the term twenty is used.

5.

It may be objected, thus: Indeed, in that case loss of profits<sup>1</sup> would not follow, inasmuch as the profits arising therefrom possess (the characteristics of) ownership. (To this the answer is), True; it would be so where the accession would remain in the same condition without detriment to its natural state as is the case with beetles and jack fruit trees &c.<sup>2</sup> That, moreover, which arises (as profit) from the land and is perishable by use; in such a case there is loss of ownership as the thing itself has perished. By the text<sup>3</sup>: "He who enjoys without a title even if it is for many hundred years, the ruler of the land should inflict on that sinful man the punishment ordained for a thief," it would follow that assessing in (terms of) an equal money value an amount equal (to the profits) should be made payable as (is done) in the case of a thief; but this conclusion is refuted by the text, "a loss takes place after twenty years." Moreover the punishment from the king still exists even (when the enjoyment is) for more than twenty years on account of a double

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1. Mark the word फल (Phala). Its literal meaning is fruit. Here it has to be variously rendered as fruit, profits, proceeds, and accession according as suits the context in each particular case. c/o *Fructus* of the Roman Law.

2. The meaning is that such accessions as remain unaffected even when the fruits have been removed would not fall under the term फल in the sense that the right regarding फल would be lost. In other words, where the accession is itself the फल as in the case of crops, groundnuts &c. there is no third stage between the land and the fruit and in each case there would occur the फलदानं. But where the fruit or profits are distinct from and a further addition to things which in themselves are accessions to the land, such things have a permanence of their own and are to be distinguished from the fruits which are perishable and are of a transitory character. Accessions of the former kind do stand without any detriment to their state e. g. mango-tree, though the fruits are taken away the tree, which in itself is distinct from and an accession to the land, stands unaffected.

3. Nārada. I. 87.

reason *viz.* the possession being without title, and there being no exception stated (to the general rule).

Therefore by reason of the default of the owner in the shape of neglect or laches as also on account of this text, the rule is established that those proceeds are not recovered as are lost for more than twenty years. This also explains the text—"in the case of wealth the loss takes place after ten years." (24).

### S'ulapāṇi.

#### Yājñavalkya, Verse 24.

By not raising a dispute when (land) is in the possession of another and with good will is being enjoyed by him, after twenty years the right of ownership becomes lost. That which is covered by twenty years' is twenty years' (possession). Vyāsa states a special rule: "For twenty years, one whose land is enjoyed by others in this world, when a competent ruler exists, the right of ownership of that man cannot be established".

*Dhanasya*, 'of the wealth' such as of the cow &c., *daśadārśhiki hānīḥ* 'the loss occurs after ten years'. *Manu*: "Whatever (chattel) an owner sees enjoyed by others during ten years, while, though present, he says nothing, that (chattel) he shall not recover". (24).

#### Yājñavalkya Verse 25.

Except in the case of pledges, boundaries, open deposits, wealth belonging to the dull in intellect, the minor, as also in the case of sealed deposits and even in the case of wealth belonging to the kings, women and Brāhmaṇas.

*Mitākṣharā* :—The pledge and a boundary and an open deposit (together make up the compound expression) 'pledges, boundaries and open deposits'; the dull in intellect and the minor (together make up the compound) 'the dull in intellect and the minor.' Their wealth (is) "the wealth of the dull in intellect and the minor", "pledges, boundaries and open deposits" and "the wealth of the dull in intellect and the minor" (make up the compound expression) *ādhisimopanikṣhepa-jadabāla-dhanāni*,

pledges, boundaries, open deposits and the wealth of the dull in intellect and the minor; tairvinā, excepting these.

Upanikṣhepo, an open deposit, is wealth placed for safe custody in another's hand after exhibiting the quality and the quantity. As says Nārada<sup>1</sup>: "Where a man entrusts any property of his own to another in confidence and without suspicion, it is called by the learned a deposit—a (separate) title of law." Placing near is (called) upanidhiḥ, deposit. 5

In the case of a pledge &c. no loss (of title) occurs of land even after twenty years, or of wealth after ten years, even when the owner looks on and does not protest; because (in that case) that<sup>2</sup> kind of default of a party is wanting, and also inasmuch as in each such case exist circumstances which explain the (apparent) delay. 10

Moreover the possession of a pledge is held with the condition of the pledge attached to it, and thus there is no default by a party even if there is delay.<sup>3</sup> A delay is permissible in the case of (disputes regarding) boundary as it is easy of proof on account of the marks made permanent by (the spreading of) husk,<sup>4</sup> fire etc. In the case of open and ordinary deposits, use and enjoyment (of the subject-matter) is prohibited; and where such possession is in transgression of the prohibition, the neglect or delay is explained as the party gets the property with interest and profits; in the case of the 'dull in intellect and the minors,' delay is very justifiable on account of the dullness and the minority; in the case of the king, on account of his absorption in various duties; in the case of women, on account of ignorance as well as immaturity (of intellect) or unskilfulness. As for a learned Brāhmaṇa delay is proper, as he is engrossed in studying 15 20 25

1. Ch. II. V. I.

2. That kind of default अग्रविषय i. e. of the kind which would bring about a loss of title.

3. i. e. even if the suit is not brought within the period ordinarily assigned for suits, of that nature. अग्र means not bringing an action—laches.

4. गृ—(tusha) is the husk of paddy. It, among other things, is interred into a pit dug deep and covered over by the earth. The marks created in this way acquire a permanence which is not lost and serve as good evidence in deciding boundary disputes; see further on Yājñ's II, 151 Vijñāneśvar's comments.

and teaching (the Vedas), and in thinking over their import and bringing it into practice.

Therefore in the case of pledges &c.; there being a (proper) reason for (explaining) delay in all cases, no loss of profits ever occurs (even) when there is possession with notice and without protest.

### Viramitrodaya.

Means of evidences have been stated, such as documents, &c. There inferential evidence has been expounded; that consisting of witnesses will be stated later on; and in the manner of the rule 'of the needle and the kettle', the Author expounds possession as a means of evidence, in six verses

### Yājñavalkya Verses, 24, 25

Without a mortgage or a similar other transaction in regard to one's own, even while one is looking on, and not asserting that 'this land is mine' and thus not protesting against the possessor of one's land, being occupied 'by another,' *pareṇa*, i. e. by one other than oneself, 'for a period of twenty years,' *cintatīdr̥ṣhikī*, i. e. by a continuous possession, the loss occurs.

Of one's i. e. of one's ownership of the movables such as the cow &c., which is held in possession, the loss occurs after ten years. This is the special point (of difference), *Ādhiḥ*, 'loss' i. e. destruction. (24).

*Ādhiḥ*, 'pledge' i. e. an encumbrance; *simā*, 'boundary,' i. e. the boundary of a village &c.; *upanikṣhepaḥ*, 'an open deposit,' i. e. an article made over to another after ascertaining its quality &c., *jaḍasya*, 'of the dull in intellect,' *bālasya*, 'of a minor,' or of an adolescent below sixteen years in age; *dhanam*, 'property,' such as the cow, land &c.

*Upnidheḥ*, 'of a deposit,' i. e. of property placed in a vessel without being measured out; and the properties relating to the king, a woman, and a learned man. By the use of the word, *api*, 'also,' the Author includes properties mentioned by Brhaspati viz.: "Such

1. सूचीकटाहम्याद—'The maxim of the needle and the kettle'. It is used to denote, that when two things, one easy and another difficult, are intended to be done that which is easier should be first attended to, as when one has to prepare a needle and a kettle, one should take up the needle first, as it is easier as compared with the preparation of a kettle.

2. Oh. IX. 12.

wealth as is possessed by a son-in-law, a learned Brāhmaṇa, or by the king or his ministers, does not become their property as owners, even after a long period of time." (25).

## S'ūlapāṇi.

## Yājñavalkya, Verse 25.

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*Upaṇikṣhepa*, 'a deposit', placed in a vessel, without mentioning (the details) and with a seal, what is deposited, thus stated by Nārada'. *Jada*, 'a dullard', one dull in intellect; *bāla*, 'a minor', i. e. one who has not reached the age of sixteen; *upanidhi*, 'a bailment', what is made over for use out of affection, *striya*, 'women' e. g. female servants and the like. Excepting these, in other properties, after the prescribed period of occupation, the right of the owner becomes extinct. These do not become the property of the person is possession. 10

Brhaspati' mentions another rule also: "Such wealth as is possessed by a son-in-law, a learned Brāhmaṇa, or by the king or his ministers, does not become their property even after a long period of time". "Of the weak, indolent, those afflicted with a disease, the terrified and the travellers, property which belongs to them under a *Śāsana* grant, cannot be taken away by possession, even if possessed". *Śāsanāruḍha*, 'entered in a *Śāsana* grant' i. e. engrossed on a copper plate or the like. (25). 15 20

The Author mentions a rule imposing special penalty in cases of pledges &c.

## Yājñavalkya, Verse 26.

A trespasser upon pledges etc. should be made to pay the principal amount to the owner, and also to the king a fine of equal amount or according to (his) capacity. 25

Mitākṣharā.—Of pledges &c., *ādhyādinam* i. e. (the text extending) as far as the wealth of 'learned Brāhmaṇas' (in verse 25 above); *trespasser*, one who bases his title upon the strength of long-continued possession *dhanam*, the amount, i. e. that principal amount the subject of dispute. 30

Here the clause *dāpayet*, should be made to pay, *daṇḍam cha tatsamam*, to the owner, is an *Anuvāda*<sup>3</sup> and the clause as

1. Here according to S'ūlapāṇi an *Upaṇikṣhepa* is a sealed deposit, while the *Mitākṣharā* and the *Viramitrodaya* interpret it as an open deposit.

2. Ch. IX. 12.

3. A *Vidhi* is the principal statement and an *anuvāda* is only an explanatory repetition of a *Vidhi*; उद्देश्य or अनुवाद is also sometime referred to as *प्राप्त*, and विधेय as *अप्राप्त* e. g. प्राप्तप्राप्तविधेयम्.

The meaning is that payment of a fine, the imposition of a penalty is the principal thing, while restitution or compensation to the owner is only a subordinate one.

The words उद्देश्य and विधेय require a special notice. उद्देश्य is the subject of an assertion; it is otherwise called अनुवाद, an explanatory repetition

also a fine equal to it, i. e. equal to the amount in dispute should he made to pay to the king, is the *Vidhi*. Although a fine of an equal amount is not in the case of a house, lands &c, still the penalty mentioned further on (Yājñ. II. 155) viz.

5 \* Page 21.

'For destroying boundary marks, and for encroaching beyond &c.' should be adopted.

If perhaps, the trespasser, on account of his immense riches is not (likely to be sufficiently) punished by a fine equal in amount to the principal, then he should be made to pay an amount according to his capacity—(i. e.) so much should be caused to be paid, by as much as his arrogance would be tamed down. For in the text:—

10 "They declare that the word *danḍa* is derived from *damana* (taming down or restraining); therefore he (the king) should restrain the unrestrained." the word *danḍa* is used in the sense of restraining

15 or taming down. He, however, who does not possess wealth even equal in amount to the principal, should be made to pay only so much as would (serve to) punish him. He, moreover, who has no money whatever, should be punished by the (several modes of punishment such as) *dhigdanda* and others. For Manu also says<sup>2</sup>:

20 "He should punish first with the expression (*dhik*) 'I or shame!' then by (a harsh) reproof; thirdly by a fine (in money), and after that, by the punishment or chastisement."

The punishment or chastisement of the body has been indicated to be tenfold in the case of persons excepting

25 Brāhmaṇas. So says Manu<sup>3</sup> "Manu, horn of the Self-existent has mentioned, in the case of the three (lower) *varṇās* (orders) ten places for (inflicting) punishment; but a Brāhmaṇa shall go unhurt (from the country); (the ten places are) the organ, the belly, the

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of, or reference to, what is already mentioned; *विषय* is the fact, or the quality asserted of the subject; it is otherwise called the predicate, and is to be proved or established. The *उद्देश्य* is already known or assumed as established, while the *विषय* is that to establish the connection of which with the *उद्देश्य* is the object of the proposition. To take an illustration: "Devadatta is wise." Here Devadatta is the *उद्देश्य* or the subject, and being already known or assumed as established is from another point of view also an *उद्देश्य*; but "wisdom" is that which is to be established with reference to Devadatta, and is therefore the *विषय*.

1. of Gautama X. 28. 2. Ch. VIII. 129. 3. Ch. VIII. 124~125.

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tongue, the two hands, the two feet, the eye, the nose, the two ears, the wealth, and also the (whole) body." It should be observed that the punishment should be administered only to such parts of the body as the organ &c. by means of which an offence has been committed; or (he) should be made to serve on labour, or be 5  
consigned to a prison-house. As has been said by Kātyāyana<sup>1</sup>; "If it is found that he is unable to make the payment of money, he should be made to work under his orders; if unable, he should be consigned to a prison-house; excepting (in the case of) a Brāhmaṇa". 10  
In the case of a Brāhmaṇa, however, in the absence of money, 'prevention of the act, etc.' should be ordered; as says Gautama<sup>2</sup>: "Preventing (a repetition of) the deed, publicly proclaiming his crime, banishment, and branding (are the punishments for a Brāhmaṇa) and he (i. e. the king) who does not do his duty 15  
(by inflicting punishment) &c."<sup>3</sup> Nārada<sup>4</sup> also after laying down the law viz. "Corporal punishment, confiscation of entire property, banishment<sup>5</sup> from the town and branding, as well as amputation of the (guilty) limb are (declared to be) the punishments for Sāhasa of the highest degree; this law of punishment is ordained for all (castes) indiscriminately," 20  
has said,<sup>6</sup> "Excepting (only) corporal punishment in the case of a Brāhmaṇa. A Brāhmaṇa must not be subjected to corporal punishment. Shaving of the head, banishment from the town, branding on the forehead with a mark of the crime of which he has been convicted, and expulsion after parading on an ass shall be his 25  
punishments." The rule for branding has (there) been laid down (thus)—"For violating a Guru's bed (the mark of) a female part shall be impressed; for drinking liquor, the sign of a tavern; for theft, a dog's foot; and for murdering a Brāhmaṇa headless corpse."<sup>7</sup> As for the text<sup>8</sup> of Āpastamba, viz. "In the case of a Brāhmaṇa, 30  
his eye-sight should be blocked," the meaning thereof is that at

2. XII. 47.

1. Verse, 479.

3. The text given here is not complete. The full text of गोत्रं न कर्तुं न शक्योऽपि नृपः i. e. the king who does not do his duty in this way makes himself liable for a penance.

4. Ch. XIV. 8. 9.

5. वञ्च is used here in the sense of प्रवृत्त send into exile.

6. Ch. XIV. 9. 10.

7. Manu. IX. 237.

8. II. 10. 27, 17.



the time of *baishiog* a Brāhmana from the towo his eye-sight should be blocked by means of a cloth, etc., and not that his eyes should be pulled out. For otherwise there would be a contradiction with the texts of *Manu* and *Gautama*, viz., "a Brāhmana should be exiled unhurt" "a corporal punishment is not (laid down) for a Brāhmana." So enough of prolixity.

### Viramitrodaya.

In the case a pledge and other kinds mentioned above, by reason of the force of possession, not only of the person in possession is there no title by ownership established, but on the other hand, for one who takes it away by the force of enjoyment, there is even punishment; so the Author says

### Yājñavalkya, Verse 26.

*Ādhyādindm*, 'of pledges &c.' particularly as owner, *karidram*, 'trespasser,' one who appropriates it at his pleasure, *dhanine*, 'to the owner' i. e. to the owner of the property pledged, *dhanam*, 'the property' in the form of the pledge which is the subject of dispute, *dāpayet*, 'should cause to be paid,' the inquiring officer.

*Tatsamam*, 'equal to that,' i. e. is specie or by the value, equal to the pledged article, or in accordance with the capacity of the trespasser: if he has moderate wealth, less than that, and if possessing more wealth, even larger than that, a 'penalty,' *daṇḍam*, should be caused to be paid to the king.

By the use of the word *cha*, 'and,' is added the banishment &c. of one who has not even ordinary wealth. The collection of indeclinables such as *atha*, *api*, and *va* is indicative of option. (26).

### S'ūlapāṇi.

### Yājñavalkya, Verse 26.

One taking away the wealth of the owner by means of a pledge &c. the Royal officer should compel to be restored to the owner. A fine equal in amount to it. In the case of an incapacity to pay a fine to that extent, even a small amount. (26).

It has been laid down that possession is evidence of title of ownership wherever possession is an invariable accompaniment of ownership. As, however, every kind of possession is not necessarily coupled with ownership, it may be asked, what kind of possession (is it that) is evidence? So the Author says

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### Yājñavalkya, Verse 27 (1).

Title is superior to possession excepting where it (*i.e.*, possession) has descended from a line of ancestors.

Mitākṣharā:—The origin of ownership, such as gift, purchase &c., is (called) A'gama, *title*. It is more powerful than even possession, inasmuch as possession as an index of ownership, is dependent upon title. As says Nārada<sup>1</sup> "After (establishing) a clear title, possession obtains an evidentiary value. Possession without a title which is not clear does not make (any) evidence (of ownership)."

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Nor, moreover, can it be said that the title to ownership can be obtained from mere possession, as it is likely that property which belongs even to others may be enjoyed by trespass &c. Hence also has it been said<sup>2</sup>: "He who pleads possession, only and no title of any sort, should be considered as a thief in consequence of his pleading such illegitimate possession" Therefore the conclusion is that only that possession which is coupled with the five characteristics, *viz.*: that it is with title, long-continued, uninterrupted, without a protest, and with notice to the opponent is (good) evidence (of ownership). Moreover it has been stated<sup>3</sup>: "Even possession is five-fold, *viz.*: it is with a title, long-continued, uninterrupted, without a protest (from the opponent) and with notice to the opponent."

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Sometime, however, possession is accepted as evidence and (in such a case) it does not depend upon title, so the Author says:

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1. Ob. I. 85.

2. By Nārada ch. I. 86.

3. By Vyāsa.

4. *i. e.* in the presence of the defendant.

Vinā pūrvakramāgatāditi, *excepting where it has descended from a line of ancestors*; pūrvakramah, *line of ancestors*, is the (continued) line of the past three ancestors such as the father and the rest. Vinā, *excepting*, that bhoga, *possession*, which has come down in this way, A'gamo abhyadhikah, *title is superior*; this is the context. The meaning is that such a possession being even superior to title is (good) evidence independently of title.

Even then, it is independent of the knowledge of a (lawful) title, and not of its existence itself. It should be marked that the existence of title is deducible from that (*i.e.*, possession) itself. Moreover, the text 'excepting when it comes down from a line of ancestors' refers to immemorial possession; while the text "title is superior to possession" refers to possession within memory. Hence also in the case of possession within memory, it (*i.e.*, possession) has evidentiary value only when it co-exists with (the means of) knowledge of title, because if the absence of knowledge is not here properly accounted for, it is possible that an (absolute) absence of (a legal) title may be presumed. In the case of immemorial possession, however, a long continued possession is itself evidence (of ownership) independently of the knowledge of title, because in that case there is an absolute absence of the means by which want of knowledge of the origin (or title) is accounted for. This very thing has been made clear by Kūṭyāyana: "In cases (falling) within the memory of man, possession in the case of land, is regarded as evidence of ownership when it is with title. But in cases (extending) beyond human memory, enjoyment by three generations suffices, on account of the absence (of knowledge) of (the proof of) title." Time within the memory of man extends as far as a hundred years. As there is the S'ruti, "a (*puruṣha*) man has a hundred years' (duration) of life, Anuṣamābhāvat, on account of the absence of proof &c., *i.e.*, owing to the absence of a positive certainty as to the non-existence of title on account of the

1. Here there is a mistake in the print; a p. 22 l. 3 for *अनुसमभवात्* read *अनुसमभवात्*.

2. Verse, 331; Comp. Nārada I. 89.

non-existence of proper means of the knowledge of title<sup>1</sup>. Therefore possession creates ownership when it is for more than a hundred years (which is), uninterrupted, without a protest (with the knowledge), and in the presence of the opponent and when the origin of title has not been determined, inasmuch as a (legal) title is presumed in the absence of (proof to) the contrary. Even in the case where possession extends beyond the memory of man, it is not evidence (of ownership) if there is a tradition about its being without a title. Hence also has

1. योगावृत्तयः—mark this term. उत्पत्तिरिति means ज्ञानम् or knowledge; and an अवृत्तयि is its absence. An अवृत्तयि may occur in two cases, viz. (1) where there is a capacity for the perception, but still there is want of perception; and in this case the अवृत्तयि is योगः; and secondly (2) where there is an absolute absence of capacity for perception and therefore there is want of perception in which case there is योगावृत्तयः. Thus, उत्पत्तिरिति may be possible in two cases (1) where the उत्पत्तिरिति is due not to an absolute absence of the means of perception of the वृत्त such as eyes &c. but still there is ज्ञानम्. Here no doubt there is an अवृत्तयि in spite of the existence of circumstances necessary for an उत्पत्तिरिति i. e. there exists an initial capacity for the perception, but still an imperception occurs and so the अवृत्तयि is योगः. Stated in simple language, where there is योगः for उत्पत्तिरिति but still there is an अवृत्तयि we have a योगावृत्तयि. See *Dālabhāṭṭī* p. 42 l. 3. “योगादे सत्पत्तिरिति” (2) where, however, there is an absolute absence of the (योगः) capacity for perception, there is no possibility of an उत्पत्तिरिति at all as e. g. on account of blindness &c. in such a case there is अवृत्तयि but not a योगावृत्तयि, so there is a योगावृत्तयः.

In the present context, where the possession is recent, it is possible to ascertain the origin, but there may exist circumstances which may account for the non—knowledge (अवृत्तयि) of the origin, in such a case there is योगावृत्तयि. In the case of long—continued possession the origin of the title is not known, and it is not known because it is absolutely impossible to know it. Here there is योगावृत्तयः.

The purport of the above may be put in short and simple language thus: Non-perception of a thing may be due to two circumstances viz. (1) absence of means of perception but with a capacity to perceive, and (2) absence of the capacity for perception—In (1) it is योगावृत्तयि, in (2) it is योगावृत्तयः e. g. the question is whether a man is learned. For determining this, learned men are required to test the capacity of the man who says that he is learned. If learned men are available and still the capacity or learning of the man does not come out it may be properly said that the learning does not exist at all—here there is a योगावृत्तयि. But if learned men are not available and the capacity remains undetermined on that account there is an अवृत्तयि which may be explained by a proper reason and therefore there is a योगावृत्तयः.

it been said<sup>1</sup> that "He who enjoys without a title even if it be for many hundred years, the ruler of the land shall inflict on that sinful man the punishment ordained for a thief."

It should not, however, be supposed by the use of the singular  
 5 number in "He who enjoys without a title" and the use of the word  
*even (api)* in "even if it be for many hundred years," that a punishment has been ordained (only) for the first acquirer without title even if the possession is held for a long time. This does not hold as  
 (in that case) in the case of the second and the third generation even  
 10 a possession without title may come to be accepted as evidence (of ownership), as Nārada<sup>2</sup> has said: "In the case of the first acquirer, gift is the (proper) cause (of title); while for the intermediate generations possession with title (is the cause.)" Therefore in all cases, of possession without title the rule (laid down in) "he who enjoys  
 15 without a title &c." should be observed.

As to what has been said<sup>3</sup> viz. "When possession has been successively held, even though unlawfully, by the three ancestors and the father, the property (so held) cannot be taken away from him, because it has descended through three (successive) lives in order,"  
 20 even there, it should be construed as "by the three ancestors along with the father." There also the expression "descended through three (successive) lives in order" is indicative of a period beyond the memory of man. (Because) if it be taken (only as) referring to three (particular) lives, it is possible that three lives might be over even  
 25 within the space of one year and possession without ownership might become evidence (of ownership) even in the second year (of occupation). And in that case there would be a conflict with the Smṛti<sup>4</sup> "In cases (falling) within the memory of man, possession in the case of land, is regarded as evidence of ownership when it is  
 30 with title."

The text *onnyāyenāpi gadbhuktam* 'when possession has been held even though unlawfully &c.' should be construed as follows:—  
 "what has been possessed cannot be taken away, even though it be unlawfully (held); what then where the illegality (of the possession)

1. By Nārada I. 87.

3. Nārada I. 91.

2. See Kātyāyana, Verse 322.

4. Of Kātyāyana, Verse 321.

is undetermined", inasmuch as the word *api* (even though) has been used in it.

As to what has been said by *Hârîta viz.* : "What has been held in enjoyment in continuation by three (generations of) ancestors without any title whatsoever and what has descended through three (successive) lives in order, cannot be taken away", even there, (the expression) *atyantamâgamam vind* 'without any title whatsoever' is to be explained as without any available title &c. and not without any title at all. It has (already) been said that there cannot be ownership even with a hundred (generations) of possession if the title itself is not available. The import of *kramât tripurushâgatam* 'descended through three lives in order' has been explained. 5 10

It may be said : "Possession cannot properly be accepted as evidence of ownership, because when it is within

An objection. the memory of man it is dependent upon title. 15

For, if title is known by other means (of proof), then ownership having been established by the same (means), possession is not evidence either of ownership or of title. And if title is not known by other means, how can possession which is qualified by title be evidence ? " (To this) the answer is as follows : 20 Even possession which is accompanied by a title though proved by other means when uninterrupted creates ownership in course of time. A title though proved is not sufficient to create ownership in course of time, (if it be) without possession, as a gift or sale in the meanwhile might create a title to ownership. Thus the whole 25 is unobjectionable. 27 (1)

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It has been said that possession is evidence (of ownership) when it is accompanied by title; then (it may even be said that) title is evidence (of ownership) independently of possession. So the author says

30

Yājñavalkya, Verse 27 (2).

In a title also there would be no force if there is no possession even for a short time.

Mitākṣharā :—In (the case of) a title where bhuktiḥ, possession even for a short time does not exist, no ; in that (i. e. that title) there is stokâpi not full force Balam.

This is the meaning intended. A Dāna, gift, is that where

there is a cessation of one's ownership and the  
\* Page 23. commencement of another's ownership is secured;  
if the other accepts it as his own, and not

otherwise. Acceptance, moreover, is threefold. Mental, Mānasaḥ,  
Verbal, Vāchikaḥ, and Physical, Kāyikasaha. Of these the

10 Mānasa or mental is in the form of a (mental) resolution that 'it  
has become mine.' "The Vāchika or verbal is an objective  
recognition of the thing (as one's own), with the utterance of the  
words "this has become mine." The Kāyika or physical is of many  
15 sorts viz. by actual receipt or by touching (the subject matter) &c. In  
this respect a rule has been laid down : "A deer-hide should be given  
by (means of touching) the tail, a cow by the tail, an elephant by  
the trunk ; by the hair, should similarly, a horse be given and a maid  
20 by the head." Āswalāyana also says.—"The consent of sentient  
beings should be obtained ; non-sentient beings and a maid should be  
touched."

There, in the case of gold (i. e. money), as physical  
acceptance becomes complete only after the offering of the water,<sup>2</sup>  
clothes &c. all the three modes of acceptance are observed. In  
the case of land etc., however, a (complete) physical acceptance  
25 being impossible without the enjoyment of profits, the acceptance  
should be by possession (for) howsoever short a time (it may be ;)  
otherwise a gift, or a sale does not become complete. Thus a title  
becomes weak if it is unaccompanied by (actual) physical acceptance  
in the form of the enjoyment of profits, because, there such a title  
30 i. e. one with possession is wanting. This,<sup>3</sup> however, would be

1. स्रष्टव्यक is the same as स्रष्टव्यक having reference to a particular condition or object. Note the ordinary process in daily offerings. e. g. (1) अग्ने स्वाहा (2) अग्रे स्वाहा, (3) न मनः Thus it typifies the essentials of a donation viz. स्वस्वकविशुक्ति and परस्वकविशुक्ति cf. Donatio of the Roman Law and its essentials.

2. As distinguished from the land &c. in which case acceptance is not complete until profits are gathered in.

3. For an exposition of this passage and its context see the Bālabhāṭṭi Sk. p. 45 ll. 4-6.

where the priority of time between the two is not known. When, however, the priority of time is known, a prior title alone will have force even if it is wanting in (the necessary) qualities.

Or again, it has been laid down<sup>1</sup> that evidence is of three kinds viz. writing, witnesses and possession; it may be asked, where all these exist together which of them would prevail and where? So the answer that would naturally suggest itself is this: "Title is superior to possession, excepting where it (*i. e.* possession) has descended down from a line of ancestors. In a title also there would be no force if there is no possession even for a short time." The meaning is this. In the case of the first acquirer, title established by witnesses is even stronger than possession, unless there is a possession which had come down from a (successive) line of ancestors. Such possession moreover, coming down from a (successive) line of ancestors in the case of the fourth generation becomes stronger than a title established by a writing. While in the case of the intermediate generation, a title accompanied by possession even though short is superior to a title without possession. This very thing has been made clear by Nārada<sup>2</sup>: "The origin (of title) in the case of the first (acquirer) is gift, in the case of the intermediate (holders) possession with title, and in the case of possession which is long and continued, (such) possession is itself the sole origin." 27 (2).

#### Viramitrodaya.

Possession without a lawful origin (even though) extending over more than three generations is not evidence of title, but only such as has a lawful origin; so the Author says

Yājñavalkya, Verse 27.

The possession which is other than that handed down in a line *i. e.* come to from the preceding lines of ancestors such as the father, and the three ancestors, even greater than that, and different but arising out of it is the *āgamah*, 'origin of title' such as sale, acceptance of a gift &c. by reason of the derivation viz., *āgacchāḥate*, 'comes' *i. e.* becomes one's own, by which, that. The preposition, *adhi* is used to secure the parts.

1. *i. e.* in verse 22 above p. 713 as means of evidence.

2. Cf. Kātyāyana, Verse 322.



Indeed if thus a legal origin of title is necessary to be established, then for establishing one's own proprietary interest, a continuity of possession would be useless. (Anticipating this question) the Author says—In regard to property such as land, &c., even if a little, as compared with possession for three generations, i.e., for a short time even, possession does not exist, there even a legal origin of title has no force, i.e., will not be helpful in establishing the object at issue. Even if the existence of a legal origin of title be proved, by reason of the same not having been proved to have been parened, for establishing it, it is necessary to establish continuity of possession. This is the meaning.

Although, a legal origin of title has not been pointed<sup>1</sup> separately as a distinct means of evidence, still, it should be noticed that it is included in 'inference', added to by the word *cha* 'and'.

For three generations, i.e., possession enjoyed for three generations even if without (the establishment of) a legal origin, is still sufficient to establish the point at issue. So it will be stated further on. (27).

### S'ulapāṇi.

#### Yājñavalkya, Verse 27.

In the case of land &c. a legal origin of title handed down from past generations is stronger than possession. Therefore, possession transmitted through generations is stronger than title. So Bṛhaspati:<sup>2</sup> "A witness prevails over inference; a writing prevails over witnesses; undisturbed possession for three generations is stronger than both these". Vyāsa mentions possession by three generations: "That which was held in possession by the great-grandfather; and also by his son after him; and after these two, by his father also, the possession of such a one is for three generations". Bṛhaspati:<sup>3</sup> "Should even if the father, grandfather, and the great-grand-father of a man be alive, possession of the (possession of the) three during their joint lives together is to be known as possession for one generation".

Title also becomes powerful, when possession even for a short time does not exist. So Nārada:<sup>4</sup> "Though a document be in existence, and witnesses be living, particularly in regard to immovables, that which has not been held in possession is not permanent." (27).

1. i.e. in Verse 22 above.

2. Ch. IX. 23-24.

3. Ch. IX. 32.

4. Ch. I. 77.

By the text<sup>1</sup> "*Paśyataḥ abruvataḥ* etc." [ while ( he ) sees does not object etc. ], it has been laid down that after twenty years in the case of land and ten years in the case of money there would not be a recovery of profits. Thinking that in such a case it may be supposed that as with the recovery of profits so there would not even be the recovery of fine, the Author proceeds to expound the law as to fines by considering the generation (of the occupiers) as well as the means of proof. So the Author says :—

Yājñavalkya, Verse 28.

He who made the acquisition of a title if sued should prove it, (but) not his son, nor his (i. e. son's) son ; (for) in their case possession has more force.

Mitākṣharā :—Yena, by him, i. e. the person by whom of land etc. the acquisition of a title, Āgamaḥ, was made, kṛtaḥ, that man if challenged in a suit, abhiyuktaḥ, as to whence he acquired the land etc. should prove, uddharet, i. e. establish, it, tam, i. e. the title, as e. g. through gift etc., by means of a writing and other means of proof. By this also it amounts to be laid down that the first acquirer is liable to be fined if he does not make out his title.

His son, tatsutaḥ, i. e. the second, if sued need not prove title ; but uninterrupted possession without protest and with notice. By this it has also been proved that there would be no fine to the second if he does not prove title, but if he does not prove a particular manner of possession. His son, tatsutaḥ, i. e. the third, need not prove either title or any particular manner of possession, but simply possession handed down in a (successive) line (of ancestors). By this also it has been established that there would be fine for the third if he did not prove possession handed down in a line, and not if he does not prove title or a particular manner of possession. In their case, tatra, i. e. in the case of the second and the third, possession, bhuktiḥ, alone has more force, gariyasi.

There also, the distinction to be noticed is, that in the case of the second it has force, while in the case of the third, there is greater force. The loss of the thing takes place equally in all the three, that

1. Verse II. 24 p. 41, II. 36-37 of Eng. Tr. p. above.

is, the purport is that if title is not proved the distinction has no reference to the fine only. Hārita also has said—"He, by whom an acquisition has been made, is liable to punishment if he does not prove it, and not his son or his (*i. e.* son's) son; but even these lose the thing possessed." 28.

### Viramitrodaya

At times, even elsewhere also, mere possession is proof (of title); so the Author says

#### Yājñavalkya, Verse 28.

10 The person who made the acquisition of title, such as by purchase &c., such a one when challenged in a judicial proceeding, *i. e.*, asked to establish his title, *tan āgamam*, 'such origin of title', *uddharet*, 'he should prove', *i. e.*, establish by evidence.

15 *Tasya*, 'of him', *i. e.*, of the one who acquired the title, son, or also the son of the son of him who acquired the title, need not establish the origin of the title acquired by the grand-father.

*Tatra*, 'in their case', *i. e.*, in the case of his son and the succeeding generations, *bhuktih*, 'possession', *gariyati*, 'has more force', *i. e.*, irrespective of any other, is sufficient to establish the claim.

20 The word *ud*, 'or', is used to show indifference; by that are included the great-grandson, &c. In *Tatra*, 'in that case', the Locative is used as having the force of the Possessive case. By the use of the word *tu*, 'however', is excluded possession; even in that case also, the enjoyment being necessary to be established. (28).

### S'ulapari.

#### Yājñavalkya, Verse 28.

One by whom witnesses, documents &c. have been indicated in writing in the case of (disputes regarding) land &c., such a one should expose the falsity of witnesses, documents &c. relied upon by the person  
30 complained against passed by another. His son and grandson, however, need not try to prove. In their case, possession itself will expose the falsity. It is not correct to explain *uddharet* 'should prove' as *darśayet* 'should point out.' In that way in the case of the son and the rest, when mere possession being proof of the rule 'that possession for three generations  
35 is proof', may not hold. As says Bṛhaspati: "The person who has

taken possession should establish his possession, as well as the origin of his title, in the Court; his son, possession alone; and in the case of grandsons &c. nothing whatsoever". The meaning is, that by regard to the rule "that pure possession without interruption in the case of grandsons" by grandsons, the origin of title or of possession need not be proved. The origin of title and the possession, however must be pointed out. (28). 5

\* PAGE 24.

By the (qualifying) text<sup>1</sup> "excepting where it has come down from a line of ancestors" it has been laid down that possession may be (accepted as) evidence when it extends beyond the memory of man and in which case it is independent of the knowledge of title. The Author mentions an exception to this 10

Yājñavalkya, Verse 29.

If a person happen to die while a suit was filed against him his (legal) heir should prove it. In such a case possession is no evidence (i. e. of ownership) if it is not proved to be accompanied with title. 15/

Mitākṣharā :—When, however, a trespasser etc., abhiyuktaḥ, while a suit had been filed against him, and before the suit was decided, paretaḥ, happen to die i. e. happen to depart to the next world, then his heir, tasya rikthī e. g. sons etc., tam uddharet, should prove it i. e. the title; since in such a case, tatra i. e. in that suit, bhuktiḥ, possession, without title, even though established by witnesses etc., is no evidence. Because by reason of a suit against the last holder, possession ceased (to have any value as evidence). It has also been said by Nārada<sup>2</sup>: "Of the litigant who has died while a suit was filed against him, the son should prove the title, (since) the point (at issue) will not be established by (mere) possession." 20 25

Viramitrodaya.

Here, in this connection, the Author mentions an exception 30

Yājñavalkya, Verse 29.

Since, in such a place, *dgamena vind kṛtā*, 'held without title', i. e., unaccompanied, *bhuktir na kṛānam*, 'possession is no evidence', i. e., for establishing the point at issue.

1. Yājñavalkya II. 27 (1) see p. 733 above.

2. Ch. I. 93.

Here, moreover, possession is evidence (of ownership) if it has the five characteristics,<sup>1</sup> viz.: "If it is with a legal origin of title, long-continued, without any gap, without protest from another, and in the presence<sup>2</sup> of the defendant." Thus, by the text,<sup>3</sup> 'Title is superior etc.', its being coupled with a legal origin of title, by the text,<sup>4</sup> 'for twenty years, etc.', its long-continuousness and uninterruptedness, also by the text,<sup>5</sup> 'without protest, etc.', its being without a protest from another, and by the text,<sup>6</sup> 'while looking on, etc.', the near presence of the defendant, has been pointed out.

In some places, it has been stated that in the case of possession for three generations, accompaniment by a title is not required (to be established)—there it is doubtful, because without the origin of a legal title, the acceptance of (mere) possession (as sufficient), would be in conflict with the Smṛiti. For, says, Nārada<sup>7</sup>: "He who enjoys without a title for ever so many hundred years, the ruler of the land should inflict on that sinful man, the punishment ordained for a thief", also<sup>8</sup>: "By (establishing) a clear title, possession obtains an evidentiary value. Possession without a title which is not clear does certainly not make for (any) evidence (of ownership)".

Here, by the use of the word *eva*, 'certainly', and also by a re-iteration of what was established once, it may be said that in all cases possession is evidence of title only when it is accompanied by a legal origin of title. Not so. The text of Nārada has application only when an absolute absence of a legal origin is positively determined. And thus, possession for three generations or the like, will have evidentiary value even when there is a doubt about the (origin of) title. Intending this very thing, the same<sup>9</sup> writer says: "Even though unlawfully, when possession has been held successively, by the father and the three prior ancestors, that property cannot be taken away from him, because it has descended through three (successive) generations in order." "That which even without a title has been enjoyed before by three generations, that having been handed down for three generations cannot be disturbed."

Vyāsa also:—"That which is absolutely without a title and as such has been enjoyed by three preceding ancestors, such a thing having

1. Aparārka assigns this text to Vyāsa, while the Smṛtichandrikā to Pitāmaha.

2. i. e. with notice to him.

3. Yājñ. II. 27 (1).

4. Yājñavalkya II. 24—2nd quarter.

5. and 6. " " " 1st quarter.

7. Ch. I. 87. 8. Ch. I. 85.

9. Ch. I. 91.

bees handed down in succession for three generations, cannot be disturbed. What was held in possession by the great-grand-father, and by his son after him, and after these two by the father also, the possession of his, is possession for three generations. For twenty years having been enjoyed by the owner without disturbance, such possession of land is as far as one generation, double that is for two generations, and for three generations is treble ; in such a case origin of title is not necessary.” 5

Thus, moreover it has been established that possession for twenty years is evidence only when there is certainty of a legal title, the proof of which it contemplates. 10

Indeed even thus, in the text<sup>1</sup> : commencing with ‘while looking on and not protesting’ and its theory, so in the text:  
An objection. “ Whose possession has been continuous, and has never been interrupted for thirty years, from him, that should not be disturbed.” The contradiction between these is apparent there itself. By stating that a thirty years’ possession has evidentiary value, in effect the evidentiary value of twenty years’ possession is discarded. The answer is: No. The text ‘While looking on and not protecting’ has application where the possession is without protest, while in the text of Bṛhaspati by the use of the word ‘not uncontinuous’ possession characterised by quarrel, beating and like other interruptions, even possession with protest also is deemed to have evidentiary value. 15 20

And thus as the result of all the texts, and a conflict by regard to (the fact of) a difference of subjects, the capacity for possession for ten years and the like either as creating a title for ownership, or to serve as its evidentiary value, has been removed. Not the first, like acceptance (of a gift) possession not having the force to be regarded as a source indicative of proprietorship ; nor the last, as generally in a possession without a title there is a vitiation. 25 30

Oh ! indeed ! Then direct a similar view to possession for three generations ! If it be on the strength of an express text, then in such a case, the decision would be by regard to the principles of a fraudulent action. Or if a text laying down the evidentiary value of a possession for three generations is alone the basis for its being accepted as the means of origin of ownership, then it is similar to the one under consideration, and in this way if it be suggested that this possession for six months even, would by a parity of reasoning, be regarded as evidence 33

Here, moreover, possession is evidence (of ownership) if it has the five characteristics, viz.: "If it is with a legal origin of title, long-continued, without any gap, without protest from another, and in the presence of the defendant." Thus, by the text, 'Title is superior etc.', its being coupled with a legal origin of title, by the text, 'for twenty years, etc.', its long-continuance and uninterruptedness, also by the text, 'without protest, etc.', its being without a protest from another, and by the text, 'while looking on, etc.', the near presence of the defendant, has been pointed out.

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Here, by the use of the word *eva*, 'certainly', and also by a re-iteration of what was established once, it may be said that in all cases possession is evidence of title only when it is accompanied by a legal origin of title. Not so. The text of Nārada has application only when an absolute absence of a legal origin is positively determined. And thus, possession for three generations or the like, will have evidentiary value even when there is a doubt about the (origin of) title. Intending this very thing, the same writer says: "Even though unlawfully, when possession has been held successively, by the father and the three prior ancestors, that property cannot be taken away from him, because it has descended through three (successive) generations in order." "That which even without a title has been enjoyed before by three generations, that having been handed down for three generations cannot be disturbed."

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And thus as the result of all the texts, and a conflict by regard to (the fact of) a difference of subjects, the capacity for possession for ten years and the like either as creating a title for ownership, or to serve as its evidentiary value, has been removed. Not the first, like acceptance (of a gift) possession not having the force to be regarded as a source indicative of proprietorship; nor the last, as generally in a possession without a title there is a vitiation. 25 30

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of ownership, the answer is, no. For a subject, covered by an express text, there is no scope for a maxim. This is the point. (29).

### S'ulāpāṇi.

#### Yājñavalkya Verse 29.

5 If the person complained against be dead without proving his title, then his son and the like should establish the title. So says Nārada<sup>1</sup>: "If a litigant dies during a law suit of this sort which has been commenced, and not decided, the point must be established by his son. Possession (of the father) will not be sufficient".

10 Possession for three generations with a title has evidentiary value. So says Kātyāyana<sup>2</sup>: "Land which has been enjoyed in possession for three generations in due course, in such a case that land will be retained by the fourth even in the absence of a document" The same Author<sup>3</sup> explains the expression *yathā vidhi* 'in due course', thus: "With a legal  
15 origin of title, long-continued, without a gap, without interruption by another, and in the presence of the opponent. Thus of five characteristics is possession intended." "After<sup>4</sup> establishing a clear title, possession obtains an evidentiary value. Possession without a title, or with a title which is not clear, does not make for (any) evidence (of ownership)". (29).

20 It has been established that where a suit remains undecided and a litigant dies, the (proceeding of the) suit does not stop (there). In some cases, however, where a suit is decided or a litigant is living, a suit is re-tried, and in some cases it is not re-tried; for a determination of the rule (applicable) in these cases, the Author  
25 mentions the comparative superiority and inferiority of those who decide disputes

#### Yājñavalkya, Verse 30.

In matters of legal proceedings between men, officers appointed by the King, the Pūgas, the S'reṇis, and the Kula's,  
30 (each of these) preceding should be considered to be in the superior order of priority (specified here).

1. Oh. I. 93.

2. Verse 327.

3. See note 1 on p. 744 above. Here S'ulapāṇi assigns this text to Kātyāyana.

4. Nārada I. 85.

Mitākṣharā:—Nṛpeṇa, *by the king, i. e. by the ruler; adhikṛtâḥ, appointed, for trying and deciding legal proceedings, referred to in the text*<sup>1</sup>: “A king should select as his Councillors, &c.” and pugâḥ, *corporations, i. e. of men (though) belonging to different castes and (following) different occupations, but residents of the same place e. g. of a city, town &c.; s'reṇayaḥ, trade-guilds of persons earning their livelihood by the same (kind of) labour whether belonging to different castes or to the same caste e. g. of the dealers in the cattle, beetle, the weaver and the currier; kulâni, groups of caste-people, relatives, and cognates.*

Of these four *i. e.* officers appointed by the King &c. pûrvam pûrvam, *in the order of priority, whoever has been mentioned first, those in order, jñeyam, should be considered i. e. regarded, as balavat, more powerful i. e. superior, ūrṇām, between men, i. e. men engaged in litigation; vyawahârawidhau, in the matter of legal proceedings, i. e. in the matter of trying and deciding a dispute.*

This is the meaning intended: In the case of a suit decided by officers appointed by the king, there would be no fresh hearing before Pûgas &c. on the ground of a wrong (exercise of) judgment, even if the defeated party is dissatisfied. Similarly, even in the (case of the) suit decided by Pûga there would be no appeal to S'reṇis &c. So on a decision by the S'reṇi there can be no resort to the Kula. But from the decision of the Kula one may go to the S'reṇi &c.; from the decision of the S'reṇi to the Pûga, and from the judgment of the Pûga to the officers appointed by the King.

Nârada<sup>2</sup>, however, has said that there would be an appeal to the king even from a decision of the officers appointed by the king “Kulâs, S'reṇis, Pûgâs,<sup>3</sup> an officer appointed (by the king), and the king (himself) are invested with the power of deciding law suits; and of these, each succeeding one is superior to the one preceding him in order.”

In such a case, moreover, where a party appeals to the king, if in a trial with a wager before the king and his councillors together

1. See Yājñ. II. 2. p. 2.

2. Introduction Verse 7.

3. Gæus (V. L.)

with the officers before whom it was first tried, the party complaining of impartiality is defeated, he should be fined. But if he succeed, then the officers appointed as judges should be fined. (30.)

### S'ulapāṇi

5

### Yājñavalkya, Verse 30.

*Pāgaḥ*, 'An association formed e.g. of grocers and the like is called *Pāga*', thus stated by *Kātyāyana*<sup>1</sup>; and the collection of grocers and others of different castes, is *Śreṇiḥ*; an assemblage of those of the same caste is a *Kula*, other than that. Of these when authorised by the king, in the matter of a decision of a dispute, the one prior is more authoritative than the one succeeding. This in regard to a rehearing has greater force, e. g. what has been decided by the *Pāga*, must not be interfered with by a *Śreṇi*. This is the meaning.

By these should be decided excepting cases involving heinous offences and the like. So says *Brhaspati*<sup>2</sup>: "Those groups such as the *Kula*, *Śreṇi*, *Gaṇas* and the like as have been duly appointed by the king, should decide cases of disputants excepting those relating to the adjudication of heinous offences." (30.)

It has been said that a suit decided by an inferior tribunal may be retried, and that decided by the superior is not reopened. Now the Author mentions cases where even a suit decided by the superior tribunal is reopened

### Yājñavalkya, Verse 31.

Transactions brought about by force or fraud should be upset, so also those entered into by women, at night, in the interior of the house, outside, or with the enemies.

*Mitākṣharā* :—*Halēna*, by force, i. e. under compulsion; *upādhinā*, by fraud, such as threats etc.; *vinirvṛttān*, brought about, i. e. produced; *vyawahārānniwartayet*, transactions should be upset. Similarly *stribhiḥ*, by women; *naktam*, at night, even if by others than women; *antarāgāre*, in the interior apartment of the house; *bahir*, outside the village; *sātruhṣica kṛtān*, as

also those transactions entered into with the enemies, should be reopened. This is the construction. (31.)

### S'ulapāni.

#### Yājñavalkya, Verse 31.

By force, or by fraud brought about, as also that made by women, 5  
at night, or in the inner apartment of a house, or those entered into  
outside the town, the transactions such as of sale, gift, and the like, as  
also entered into with the enemy, one should avoid (31).

A transaction entered into by the intoxicated, the insane etc., 10  
will not be upheld

#### Yājñavalkya, Verse 32.

A transaction<sup>1</sup> entered into by a person (who is)  
intoxicated, or insane, or afflicted with disease, by one in  
distress, or by a minor, or one frightened, or the like, will  
not be upheld; as also that entered into by one who has 15  
no connection.

Mitākṣharā:—Moreover, mattaḥ, intoxicated, by some  
intoxicant, unmattaḥ<sup>2</sup>, insane, affected by insanity caused by  
either of the five causes viz. (disorder, arising) from Vāta<sup>3</sup> (wind),  
Pitta (bile), S'leshmā (phlegmatic humor), or a combination of these, 20  
or by an evil demon, or by (the influence of) a plant. Ārtaḥ,  
afflicted, with a disease etc.; vyasanam, distress, is the pain caused  
by the separation from the loved and acquisition of the undesired;  
and a vyasanî, distressed, is one who is affected by it; bālaḥ,  
a minor, incapacitated for (entering into) any transaction; bhītaḥ, 25

1. A वयसि may better be rendered as "a transaction" in this context.  
The general conditions in this and the last verse apply as well to suits as to  
other transactions.

2. An Unmāda has been thus defined:—"मदपक्वदुग्धा दोषा यस्यादुग्मादमाश्रिताः  
मासमेवमतेन व्यापिहस्याद् इति कीर्तितः ।" Śūśruta.

3. Recognised by the Aryan Medical System as the three principal  
humors of the human body, every disorder of the body or of the mind being  
traceable to a disorder of one or more of these or of all the three combined, in  
which case it is called a Sannipātaḥ (सन्निपातः).

frightened, by the enemies. By the use of the term A'dī, or the like, is also indicated one who is inimical to the city<sup>1</sup> or to the nation. As Manu<sup>2</sup> has said :—" Men conversant with law and religion have laid down that a suit which is (instituted by one who is) opposed to  
5 the city or the nation, or a suit decided by the king is unacceptable as a plaint."

By these yojitāḥ, entered into, brought about ; vyvāhāro na siddhyati, a transaction will not be upheld. Also a transaction entered into by one having no connection, or by one who was not  
10 appointed as an agent, will not succeed. This is the construction.

As to what, however, has been said viz.—" A suit will not lie between a preceptor and a pupil, a father and a son, between the husband and the wife, or between a master and a servant, even if they are at conflict with each other " even that is not to be taken  
15 as amounting to (lay down) an absolute exclusion of a suit between a preceptor and a pupil and such others, as a suit has been ordained (to lie) even between them. For Gautama<sup>3</sup> has said: " A pupil shall not be punished corporally. If (this course is) impossible, (he may be corrected) either with a thin rope or a thin cane. If  
20 (the preceptor) strikes (the pupil) with any other (instrument) he shall be punished by the king." As Manu<sup>4</sup> also has said " In no case should the punishment be upon the head." When (however) the preceptor under the excitement of anger, while punishing, strikes on the head and if the pupil (who was) thus injured in a way, which  
25 is a violation of the (laws of) Smṛti and usage, complains to the king, then a cause of action (for a trial) does certainly arise &c.

Similarly, under the text<sup>5</sup> " Land which was acquired by the grandfather &c." the ownership of father and son being equal over land &c., if the father destroys by means of sale &c. (the title  
30 to) the land &c. which was acquired by the grandfather, and if the son resorts to an officer of justice, then there would certainly arise a suit even between a father and a son. Likewise, under the text<sup>6</sup>

1. i. e. opposed to the municipal, local or general interests.

2. Not found in Manu.

3. Oh II. 48-50.

4. Oh. VIII. 301.

5. Yājñā. II. 121.

6. Yājñā. II. 147.

"A husband is not liable to make good the property of his wife, which was involuntarily taken by him in a famine, or for the performance of a (religious) duty, or during illness, or while under restraint" if the husband having spent away the wife's property (even) when there was no famine &c., does not pay back when asked for, 5  
even when possessing wealth, then a suit is certainly admissible even between a husband and a wife. So also the legal relations between a slave of maintenance and the master will<sup>1</sup> be mentioned later on, and having regard to the text of Nārada<sup>2</sup> viz. "Should any one of these, however, save his master when his life is in peril, 10  
he shall be released from slavery and shall take a son's share (of his master's wealth), even in the case of a slave by birth, who would avoid a suit against a master, if the slave is not manumitted and not given a son's share? Therefore the purport of the verse beginning with "Between the preceptor and the pupil" &c. is 15  
that as a dispute with a preceptor &c. will bear no good result in this world or the next, so the pupils and others should in the first place be induced away by the king in company with the assessors. If, however, the parties press hard, a suit has to be commenced even (when instituted) by the pupil &c. 20

Although the text of Nārada<sup>3</sup> says that "Men conversant with law lay down that disputes between one and many, with women, and with servants are inadmissible as a suit;" still having regard to the text<sup>4</sup>: "He who robs the wealth of the villagers or transgresses any established usage &c." and the text<sup>5</sup>. "When one 25  
is assaulted by many &c." even a suit between one and many appears to be ordained, when they have a common cause of action. It should be noticed that a suit between one and many simultaneously will not lie when the many have different causes of action.

As for the expression 'with women', *Strīṇām*, in their case 30  
also a suit certainly is allowed e.g. with the female of a cowherd, a vintner, and such others inasmuch as these women possess independence. The text is to be explained that a suit between women other than these—i.e. women of good family whose husbands

1. Yājñā II. 162.

2. V. 30.

3. II. 12.

4. Yājñā II. 167.

5. Yājñā. II. 221.

are living shall not be admissible on account of their dependence. *With servants*; This text also should be construed to mean that 'on account of the dependence of servants upon the masters', even in a dispute relating to his (servant's) own interests a suit should be  
5 allowed only with the master's sanction, and not otherwise. 32

### Viramitrodaya.

It has been stated<sup>1</sup> that 'even while yet a suit has remained undecided, a party dies, the suit proceeds'. Now, even when a suit has been decided, and even when the party is living, sometimes the litigation  
10 proceeds, and sometimes not, so the Author says

Yājñavalkya, Verses 30, 31, 32.

*Nṛpēnddhikṛtāḥ*, 'appointed by the king', such as the Councillors; *Pugāḥ*, 'corporations' of men of different castes, such as the grocers &c. vide this text of Kātyāyana: "The association such as of the grocers  
15 and the like is called *Pāga*"; *S'reṇiḥ*, an association of people of various castes but earning their livelihood by the same (kind of) work; *Kulam* groups of caste people, relations, and cognates. Among these, the one prior by regard to each succeeding, *nṛpam*, 'of men', *tyawakṛavidhau*, 'in the matter of legal proceedings'; *guru*, 'superior', more powerful.

20 Thus it is established that a transaction examined and decided by the Councillors, even if there be a suspicion of the decision, being faulty shall not be scrutinised by the *Pāgas* and others, while a dispute decided by the *Kula* may be revised by bodies as far as the *S'reṇis*.<sup>2</sup> Similarly may be understood elsewhere.

25 By the use of the word *atha*, 'and', all being under the king's province, the superiority of the king above all has been pointed out. By the word *cha*, 'and also' has been added the conclusion that the Chief Judge is higher than the councillors.

30 So also Kātyāyana: "The Councillors are superior to the *Kulas*; the Presiding Judge is superior to these; more than all is the king by whom the law has been settled. Of suits of the type of the highest, middling, and the lowest types, decided by tribunals of ascending degrees, the judgments have a (corresponding) superior effect". (30)

35 *Balam*, 'force' i. e., superior (force); *upadhiḥ*; 'fraud', such as threats, temptations etc; by these *cinirupāṇ*, 'brought about', i. e.

1. See Yājñ. II. 29 above.

2. Verse, 679.

3. i. e. the Councillors appointed by the king, the *Pugas*, and the *S'reṇis*

produced; *śtribhīrñaktam*, 'by women, at night', even by others than women; *antarāgāre*, 'in the interior apartment of the house', inside the house; *bahiḥ* 'outside' the village etc. in the forest etc.; *śatrubhīṣā kṛtān*, 'as also those entered into with enemies'; such *vyavahārān*, 'transactions', *nivartayet*, 'One should set aside', i. e. should not accept as binding, in other words, should have re-considered. 5

The compound is to be solved as 'entered into with women, at night, in the interior of the house, outside, or with the enemies'. The sense of the possessive is expressed in connection with the several words differently. That moreover has been already pointed out according to context. By the use of the word *tathā*, 'so also' are included those opposed to the interests of the town or the nation (31). 10

*Matto*, 'intoxicated' such as by some intoxicant etc.; *unmatto*, 'insane', affected with insanity brought about by an evil star; *ārto*, 'afflicted', oppressed by a disease; *vyasānī*, 'distressed', troubled by sorrow &c.; *bālāḥ*, 'a minor', one under sixteen years of age; *bhīto*, 'frightened', one who has taken to fright; by the use of the word *A'dī*, 'or the like' are included those affected by lust, anger &c. By those, *yojitāḥ*, 'entered into', i. e. made *asambandhena*, 'by one having no connection', i. e., one not having the connection of a brother &c.; *anīyuktena* 'by one not appointed', *vyavahāro na sidhyati*, 'a transaction will not be upheld', i. e., will not bear fruit. The substance is that the same should be considered again. 15 20

By the use of the word *cha*, are included those made by *Dāśas* and the like. The word *eva*, 'also', is connected with the expression 'will not be upheld' and follows with it. Thereby it comes to be stated that although one made by the *Kula* &c., be at times upheld, one of this character can never be upheld. Here, the word *Vyavahāra* does not mean merely justice, but indicates donation, sale, mortgage and all similar 'transactions.' "A fraudulent mortgage or sale, a fraudulent gift or acceptance, and (any transaction) where he detects fraud, he (the judge) shall declare null and void (166). What is given by force, what is enjoyed by force, and what has been caused to be written by force, and all transactions done by force, are as not made; so said Manu (169)." 25 30

Nārada: "If a boy, or one who possesses no independence, transacts anything, it is declared an invalid transaction by persons acquainted with the law (39). That also which an independent person does while he has lost control over his actions, is declared an invalid 35

1. Manu Ch. VIII. 166, 169.

2. —See Śrī Sītaram Pandit vs. Śrī Harihar Pandit; 25 Bombay 169.

3. Ch. I. 39-41, 29-30. 26-27, 42.



transaction, on account of his want of independence (40). Those who are actuated by love, anger, or affected by illness, fear, or difficulty, and also those who are biased by attachment or hatred, are to be known as having lost control over their actions (41). A transaction entered into by (a slave) is declared as unauthorised, except where there is the master's authority; a slave is never his own master (29). Also a transaction entered into by a son without the father's authority, that also is declared to be invalid; a slave and a son are equal in that respect (30). The transactions of gift, mortgage, or sale of land, house, or a slave made by those who are not independent, do not reach completion, when not ratified. They say that transactions entered into by women are unauthorised when there is no adversity; especially the transaction of gift, mortgage, or sale of a house or land (26). These transactions are only regarded as valid if the husband sanctions them; or the son in the absence of the husband; or the king in the absence of the husband and the son (27). In the family whoever is the eldest or senior, and who has retained his control over the senses, a transaction entered into by him is regarded as a properly entered transaction, and not done by one not independent (42). For the sake of the family, if one enters into a transaction although himself under control, and whether in his own country or in a foreign country, that transaction, the senior should not disturb." 'Himself under control', such as a slave &c. One not independent will hereafter be described; so enough of proximity (30, 31, 32).

### S'ulapāṇi

25

### Yājñavalkya, Verse 32.

By liquor or a like intoxicant, 'intoxicated' *mattaḥ*; on account of windiness &c., one who has become 'insane,' *unmattaḥ*; one affected by a disease; one addicted to gambling; one less than sixteen years of age. By the use of the word *ādī*, 'and the like,' are included those entered into by slaves, who are not independent, or by the aged and the like, and by strangers, not related, excepting those authorised by the father. A transaction, such as of a debt and the like, entered into by these never becomes of force. (32).

\* Page 26.

35

After mentioning suits which are liable to be reversed, the Author indicates the kind of property which may be restored

### Yājñavalkya, Verse 33.

Lost wealth when (subsequently) recovered should be given by the king to the owner; if (however) he (the

claimant) do not identify it by (supplying) marks (of identification) he is liable to an equal (amount of) fine.

**Mitākṣharā** :—**Prāṇas'htam**, *lost wealth*, such as gold &c., *what was recovered*, **adhigatam**, by the revenue or police officers &c., and brought over to the king, (that wealth) should be given by the king to the owner, if the owner identify it by (supplying) marks of identification such as the quality, quantity &c. If he do not identify, then he should be fined in an equal amount for setting up an untrue claim. This refutes the presumption of ownership which may arise on account of *adhigama* (finding) being recognised as one of the causes giving rise to ownership.<sup>1</sup>

In this matter moreover, further<sup>2</sup> on the Author lays down the period of time, *viz*: "What was brought in by the Revenue Officers or the Officers of police as property lost and recovered, the owner may take away within a year; thereafter the king shall take it away." **Manu**<sup>3</sup>, moreover, has laid down three years as the period: "Property, the owner of which has disappeared, the king shall cause to be kept as a deposit for three years; within the period of three years the owner may claim it; thereafter the king shall take it." There, it shall necessarily be preserved for three years.

If the owner comes within a year, the whole should be returned (to him). Where, however, he returns after more than a year, in that case, after deducting some portion as a preservation charge, the remainder should be made over to the owner. As has been said<sup>4</sup>: "Then the king bearing in mind the law among good men, may take one-sixth part of the property lost and afterwards recovered, or one-tenth, or at least one-twelfth." In such a case in the first year the whole should be given. But in the second, after deducting a twelfth portion, in the third, a tenth, and a sixth in the fourth and in the following years, the remainder should be restored (to the owner), and a fourth of the Royal share should be given to the finder.

When, however, the owner does not turn up a fourth of the entire property should be given to the finder and the remainder may

1. See e. g. Gautama, X. 39.

2. Yājñ. II. 173.

3. Ch. VIII. 30.

4. Manu. Ch. VIII. 33.

be taken by the king. So says Gautama: "If lost property, the owner of which is not known, is recovered it should be announced to the king. The king should cause a proclamation to be made, and preserve it for one year. Afterwards one-fourth (goes) to the finder, (and) the remainder to the king." Here by the use of the word 'a year', the singular number is not stressed, vide the text: "The king should cause it to be kept as a deposit for three years." And even the text: "Thereafter the king shall take it" amounts only to a permission to dispose (it) of after three years if the owner does not turn up. Where, however, the owner appears after that (period), even if the property is disposed of, the king should deduct his due and pay (to the owner) an equivalent (amount). This is with reference to gold, &c. As regards cows, etc., the Author states (the law) further on (in the text<sup>3</sup>): "The owner should pay (four) paṇas if the animal has an entire hoof, etc."

### Viramitrdaya

It has been stated<sup>4</sup> that 'the king should administer justice'; there, not only suits as described above alone should be investigated, but even where there is no defendant, by regard to the result being reached by means of the examination of witnesses, or regard being had to the investigation resulting in a penalty consequent upon a defeat, a resemblance of a judicial proceeding, in a case of deposit &c. where the right of ownership is under a doubt, and even in the form of the assertion that 'it is mine', and the exhibition of evidence in substantiation of it, in a similar manner; intending this, the Author mentions rules in regard to treasure-trove and the like by means of four verses.

### Yājñavalkya, Verse 33.

A *nidhi*, or a treasure-trove is wealth buried before and kept permanently. That, moreover, is two-fold, differentiated as deposited by self or by one's father and the like, or as deposited by others. Of these, the first *pranaṣṭam*, 'lost,' but afterwards *adhigatam*, 'recovered', by the owner or by an officer of the king or any other, *dhanam*, 'wealth,' in the form of the treasure-trove, *dhanine*, 'to the owner' i. e., to the one

1. X. 36-38 The proper reading is प्रहृत्यपि अमिगम सति प्रशुयुः । विख्याप्य राजा संप्रदत्तयेव &c. This is the reading in the original text of Gautama.

2. i. e. Manu VIII. 30.

3. Yājñ. II. 174.

4. Yājñ. II. 1, p. 631, l. 13.

declaring that 'this is my wealth', *arpeṇa deyam*, 'by the king should he giveo,' if 'by signs' *lingaiḥ i. e.*, by means of evidence, *taddhanam vibhārayet* 'that wealth he should establish' *i. e.*, should prove as his own. *Na chet vibhārayet*, 'if he does not establish' then a penalty equal to the amount in dispute, he incurs on account of his offence in telling a false-hood of that character. 5

## S'ūlapāṇi.

## Yājñavalkya, Verse 33.

*Pranashitam*, 'lost wealth,' such as gold &c. when found by the king, identified by the owner (to be his) by marks such as the form, the number, and the like, should be given to him. On an incongruity, 10 however, he should be made to pay a fine, equal to the amount. (33).

After laying down the law regarding gold, &c., as to property lost and recovered on the roads or from the toll houses where it lay scattered, now the Author states the law regarding the recovery of gold, &c., which had long been buried in the land, and which last is 15 known as a *Nidhi* (or treasure-trove)

## Yājñavalkya, Verses 34 and 35.

The king having found a treasure-trove should give half to the twice-born. But a learned Brāhmaṇa finding (a treasure-trove) may keep the whole, as he is the lord 20 of all. (34).

If a treasure-trove is found by any other, the king should give him<sup>1</sup> a sixth part. If (however) the information is not given (by the finder) and he is found out, the finder should be made to pay a fine. (35). 25

*Mitākṣharā* :—The king having found a treasure-trove as already defined, half should be given to the Acquisition of a Brāhmaṇa, and the remainder thrown into the treasure-trove. treasury. If, however, a Brāhmaṇa find treasure-trove and he be learned, *i. e.*, accomplished by 30 learning and study, and well-behaved, then he should take the whole; since he is the lord of the whole world.

If, however, the treasure-trove is found, itareṇa, by any other, than either the king or a learned Brāhmaṇa as, e.g., by a Brāhmaṇa who is not learned, or by a Kṣatriya or such another, the king should give a sixth of it to the finder and himself take the remainder of the treasure-trove. As says Vasiṣṭha,<sup>1</sup> "A king

\* Page 27.

who finds property the owner of which is not known should take it; he should give a sixth part to the finder." Gautama<sup>2</sup> also "Treasure-trove when found becomes the property of the king; not (however) that which is found by a learned Brāhmaṇa, even a non-Brāhmaṇa finder who announces (to the king) shall obtain one-sixth, so declare some."

The past-participle *anivedita* is (used) in the active voice; he who has not given information and who has been found out, i.e., who has been found out as not having given information even to the king. Whoever, having found a treasure-trove did not inform the king and was found out by the king, should be made to pay the entire treasure found, and also a fine according to (his) capacity.

If, however, the owner of the treasure-trove himself appears afterwards and establishes his ownership by specifying the amount of the rupees, etc., then the king should give him the treasure, (after) taking for himself a sixth or a twelfth part. As says Manu<sup>3</sup>—"From that man who shall truly say with respect to a treasure-trove, 'This belongs to me', the king may take one-sixth or one-twelfth part." The choice as to the (particular) portion is to be determined by reference to the class (to which the party belongs), the time (which had intervened), etc.

### Viramitrodaya.

The Author mentions as to the second

Yājñavalkya, Verses 34, 35.

30 Rājā, 'The king,' upon finding a treasure-trove the owner of which is not known, *ardham dviṣeḥkhyo dadyaāt*, 'should give half to the twice-born,' and (the other) half he should consign to the treasury. *Vidvān*, 'learned,' i. e. accomplished by learning and study of the Vedas, twice-

born i. e. a Brāhmana, moreover, having found a treasure-trove, *aśeṣham*, 'the whole' i. e. the entire treasure, *swayaṁ ādadyāt*, 'should himself take.' *Sa*, 'he,' i. e. such a Brāhmana, *yataḥ*, 'as', *sarcasya prabhuḥ*, 'is the lord of all' i. e. of the world.

That says Manu<sup>1</sup>: "Whatever exists in this world is the property of a Brāhmana; on account of the excellence of his origin the Brāhmana is, indeed, entitled to it all. (100). The Brāhmana eats his own food; wears but his own apparel, bestows but his own olms; other mortals subsist through the benevolence of the Brāhmana (101)." (34).

*Itareṇa*, 'by any other' i. e. by not a learned Brāhmana, *nidhau labdhe*, 'if the treasure-trove is found', *rājā*, 'the king', *ṣaṣṭhīhāms'am dharet*, 'a sixth part he should' take,' from the treasure-trove.

The past participle in the *anivedita* is (used) in the active sense. One who has not given information and who has been found as having taken the treasure-trove, should by the king be compelled to pay the treasure and also a fine according to capacity.

By the expression *dāpya eva*, 'he must be made to pay,' it has been indicated that he must not be allowed to take even a small portion of the find. The word *cha*, connects this with the last clause and also is intended to include the twelfth part. So says Manu<sup>1</sup>: "The man who makes truly an assertion 'this belongs to me,' from him, the king may take a sixth part or a twelfth part." The twelfth part has a reference to one endowed with qualifications. In this connection Viṣṇu<sup>2</sup>: "A king, upon finding a treasure-trove, should give half to a Brāhmana and the other half he should deposit in the treasury (36). A Brāhmana finding hidden wealth should take it himself (37). A Kṣatriya should make over a fourth to the king, one-fourth to the Brāhmana, and should take a half. (38). A Vaiśya should give a fourth part to the king, a half to the Brāhmana, and should take one-fourth for oneself. (39). A Śūdra, moreover, should divide the find into twelve parts, and should give five parts each to the king, and, to the Brāhmana, and take two parts. (40). From one

1. Ch. I. 100, 101.

2. Note the difference between the *Mitākṣarā* and the *Viramitrodasya* in the interpretation of the word *ṣaṣṭhī*. According to the *Mitākṣarā*, after giving one sixth to the finder. The king should take the rest. According to V. M. the king should take one-sixth. Śūlapāni agrees with the *Mitākṣarā*.

3. Ch. VIII. 36.

4. Ch. III. 36-41.

who has not reported the find and who has been found, the king should take the whole (41)." Thus the text of *Vasiṣṭha*<sup>1</sup> viz. "If he finds property (the owner of) which is not known, the king should take it up, and should give one-sixth portion to the finder", has a reference to a  
 5 Śûdra, in pursuance of the text of *Viṣṇu*. (34, 35).

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### S'ûlapâni

#### Yājñavalkya, Verse 34.

The king having found an ownerless treasure-trove deposited a long time ago, should give a half to the Brâhmanas. A learned  
 10 Brâhmaṇa,<sup>2</sup> however, should take the whole; he need not give a portion to the king. The Authour states the reason: since of all kinds of wealth he is the master, as says *Manu*<sup>3</sup>: "Whatever exists in this world is the property of the Brâhmana; other mortals subsist through the benevolence of the Brâhmana." This also applies in the case of a deposit by others.  
 15 As says *Bhâradvāja*: "Upon finding a deposit laid by another, one should take it to the king; every treasure-trove must go to the king, of all except the Brâhmaṇa." (34).

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### S'ûlapâni

#### Yājñavalkya, Verse 35.

20 When a treasure-trove belonging to himself has been found by a Brâhmana who is not learned, or by the Kshatriya and others, according to *Nârada*: "The king should take a sixth share;" and according to *Manu* and others, a small portion is to be taken according to the qualification of the finder. For a deposit not belonging to oneself, however, after  
 25 giving a sixth portion to the finder of the deposit, the remainder the king should take. As says *Vasiṣṭha*<sup>1</sup>: "If one happens to find an ownerless deposit, the king shall take it up, after giving a sixth portion to the finder. If a Brâhmana finds it, and he is one who carries on his own duties, then the king should not take." When ownerless wealth, as well as  
 30 wealth the owner of which was known, was not reported, but came to be known by the king, then that wealth as well as a fine, the taker of the treasure should be made to pay. So *Nârada*: "Even a Brâhmana upon finding a treasure, should inform the king; what is given by him, he may enjoy; he would be a thief if he does not inform." (35).

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1. Ch. III. 13.

2. i. e. who finds the treasurers.

3. Ch. I. 100.

The Author mentions (the rule) about property taken away by robbers

### Yājñavalkya, Verse 36

The king should pay the wealth taken away by the robbers (and recovered by him from them) to the people of his country; and if he do not pay, he incurs the sin of the robbed as well as of the robbers. 5

Mitākṣharā:—Chauraiḥ r̥h̥tam, taken away by the robbers, and conquered back from them. Jānapadāya, to the inhabitants of his country. Whosoever that wealth be, to him should it be given by the king; hi, if, i.e., since if, adadat, he do not pay, yasya, whose, that robbed wealth may be, he (the king) incurs the sin, tasya, of him, i.e., of the robber. As says Manu,<sup>1</sup> "Property stolen by thieves must be restored by the king to (men of) all classes (varṇa); a king who uses such (property) for himself incurs the sin of a thief. If after recovering from the possession of the thieves he enjoys it himself then he incurs the sin of a thief.<sup>2</sup> If, however, he neglects the (recovery of) property stolen by thieves then he incurs the sin of a citizen. If after trying to recover property stolen by the thief, he is not able to recover it, then in that case he should pay as much amount from his treasury. As says Gautama<sup>3</sup>: "Having recovered property stolen by thieves, he shall return it to the owner. Or (if the property is not recovered) he should pay (its value) out of his own treasury." And also, Kṛishṇadwaipāyana:—"If a king is unable to recover property stolen by thieves, that (amount) should be paid from his own treasury by the king who is (so) unable." 10 15 20 25

Here ends the chapter on Special rules of Procedure.

1. Ch. VIII 40.

2. These expressions require an explanation. They supply a good illustration of the terse style (श्रुतशैली) of the Author: In the first expression by चौरैः लुप्तवस्तुं, what is intended to convey to the reader is that he incurs the same responsibility and criminal liability as a thief does. While the expression जनपदं लुप्तवस्तुं 'incurs the sin of a citizen', means that he incurs the same responsibility which a citizen does by not assisting or neglecting the recovery of robbed property.

3. X. 46-47.



## Viramitrodaya

In regard to property carried away by thieves, the Author states a special rule

## Yājñavalkya, Verse 36.

What was taken by a thief, or property of that kind, after taking  
5 it back from the thief—and when that is not possible, even from his own  
treasury, *jānapadīya*, 'to the people of his country', i.e., to the  
inhabitants of his territory, *deyam*, 'should be given'.

By the use of the word *tu*, 'however', are discriminated the making  
over to others than the people of his country, and a deduction of a portion  
10 for himself according to law. *Hi*, 'and if', i.e., since, that property  
which was taken away by the thief if not given back to him to whom  
it belonged as owner, the king incurs the sin of the thief—i.e., the sin of  
a kind which is incurred by theft.

That says Manu: "Property stolen by thieves must be restored  
15 by the king to (men of) all classes (*varṇas*); a king who uses such  
(property) for himself incurs the sin of a thief".

In the Mahābhārata also: "If a king is unable to recover  
property stolen by thieves, that (amount) should be paid from his own  
treasury by the king who is (so) unable". (36).

20 Here ends the Chapter on Rules of Procedure in the commentary  
on the Smṛti of Yājñavalkya

## S'ūlapāṭi

## Yājñavalkya, Verse 36.

What was taken away by the robber, should be restored by the  
25 king; since, he to whom that wealth belonged, of him he acquires the sin.  
If he do not recover that property, he should give from his own treasury.  
As says Vishṇu: "What was taken away by a thief, should be  
recovered and paid in entirety. If not recovered, from the treasury  
itself." (36).

30 Thus ends the Chapter on Judicial Procedure

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1. Ch. VIII. 40.

2. Ch. III. 45.

## Chapter III.

## On Recovery of Debts.

After expounding the 'Rules of Procedure' in general and particular cases, the Author now expounds the Sevenfold division Chapter on 'Recovery of Debts' the first of the 5 of the Chapter on eighteen titles of law, beginning with the text: 'recovery of debts. "An eightieth part is the interest", etc., and ending with the text: "The pledge shall be (allowed to be) redeemed after double the principal has been received out of the produce." 10

This title of "Recovery of Debts" has seven points (for consideration). (1) The *kind of debt* which should be paid, (2) the one which should not be paid, (3) by what person should be paid, i.e., by one holding a particular capacity, (4) at what particular *time* to be paid, (5) and in what way to be paid—in all, five points for 15 the debtor; and for the creditor, two, viz., (6) the mode of advancing a loan as also, (7) the mode of recovering it. This, moreover, has been made clear by Nârada<sup>1</sup>: viz. "Which debt must be paid, and which may not be paid, by whom, where, and in what way to be paid, and the rules of advancing and of recovering (loans) 20 are said to make up the (title) 'Recovery of Debts'".

Of these the Author states the rule regarding the advance (of a loan) by the creditor, as it is the first of all other points of inquiry).

## Yājñavalkya, Verse 37.

An eightieth part (of the principal) is the interest 25 (allowed) every month when the debt is (secured) by a pledge. In other cases it may be two, three, four, or five per cent, respectively, according to the order and class (of the debtor).

1. Verse 37.

2. Verse 65.

3. Ch. I. 1.

Mitākṣharā:—Māsi māsi, every month, i.e., month by month. Bandhaka is that which is deposited

\* Page 28. as a security, i.e., pledge. That which is (accompanied) by a pledge is called

5 śabandhaka, a transaction with a pledge. In such a secured transaction, the interest on money advanced

In a transaction with a pledge an eighteenth part is

10 the interest. In a transaction without a pledge, varṇānām, of the classes, krameṇa, according to the order, i.e., of the Brāhmaṇas and others, dwi-tri-

chatuḥ-panchakam, two, three, four, or five, per cent is according to law. In the case of a Brāhmaṇa debtor two per cent.,

15 in that of a Kṣatriya three, in a Vaiśya four, and in a Śūdra five, and (this) every month. Two, or three, or four, or five (make up the compound word) two-three-four-five. A hundred in

20 which such an interest is given is "a hundred with two-three-four-five." As per the following rules of grammar viz. "The affixes, mentioned above<sup>2</sup>, have also the sense of an interest, or a

rent, or a profit, or a tax, or a bribe given thereby or in that,"<sup>3</sup>

25 "The affix *Kaṇ* (क्) comes<sup>4</sup> after a numeral when it does not end with *ṣi* or *ṣṭ*"<sup>5</sup> and the rule to be observed here is the one stated in the Grammatical *Sūtra* I. 1-72 viz. "An injunction<sup>6</sup>

which is made with regard to a particular attribute, applies to words

25 having that attribute at the end as well as to that attribute itself."<sup>7</sup>

1. Pāṇini 5-1-47.

2. i. e. Pāṇini V. 1-1-46.

3. Pāṇini V. 1. 22.

4. e. g. in द्वयक् the क् termination.

5. The word षष्ठि (see V. I. 63) is to be read into the *Sūtra*, so that the whole *Sūtra* would read by adding, to the portion given above, the following viz.—"The sense of the affix being that taught hereafter upto V. I. 63."

6. This i. e. the षष्ठिविधि: (Pāṇini I. I. 72) is a rule of interpretation. When a rule is made with regard to a particular attribute or letter, it also means words having those attributes or letters at their end. Thus under the rule षष्ठो यत् (III. I. 97).—"The affix यत् comes after a root that ends in a vowel" roots ending in vowels as well as roots consisting of a single vowel are included.

7. For a clear understanding of the bearing of these rules upon the text, mark the following observations: The compound word द्वित्रिचतुष्वचत्

"Interest upon interest is (called) compound interest; it is (called) *Kālikā* when it is (payable) per month; it is *Kāritā* when it is fixed according to the wish (of the parties); it is *Kāyikā* when it is in the form of bodily labour" (the stipulation that) 'the interest 5  
 to this will be taken every month' is (an instance of) a *Kālikā*. This very (species of) interest becomes *Kāyikā* when it is receivable per 5  
 day and the period is divided by the calculation of days. Moreover, *Nārada*<sup>1</sup> after stating that "In the *Sāstras* interest is declared fourfold viz. *Kāyikā*, *Kālikā* (periodical interest), another called *Kārikā* (stipulated interest), as also the compound interest (*chakra* 10  
*vriddhiḥ*)" has said:—"Interest<sup>2</sup> at the rate of one *Paṇa* or quarter of a *Paṇa* payable constantly<sup>3</sup> and without detriment to the physical 10  
 health is denoted *Kāyikā* interest. That which runs by the month is termed *Kālikā* (periodical) interest. That interest is *Kāritā* (stipulated) interest which has been promised by the debtor himself. 15  
 Interest upon interest is called *Chakravṛddiḥ* (compound interest)."

## S'ūlapāpi

The Author states the rules of interest according to law  
 Yājñavalkya, Verse 37.

Upon a security being taken when a hundred *panas* are advanced 20  
 as a loan, an eightieth part i. e. one and a quarter *pana* every month has been explained and solved as द्वे वा दशे वा &c. (Sk page 28 lines 4-5). For this the authority is नृदक्षिण etc (V. I. 47.) under which rule the affix is added to a word in the first case (नृ) in construction. The sense of the affix is that of a locative (अक्षिण) Then the वृ ending in द्विषचतुर्वचसं is explained by the rule संज्ञायाः &c. (V. I. 22.). And lastly by the नृनृदक्षि. the application of the first rule is extended to all the members of the compound, and thus is brought out the meaning of this compound word as explained in line 6 on page 28.

1. Cl. I. 102-104.

2. नृदक्षिणवृद्धिर्वा कृत्वा is the reading in Dr. Jolly's edition.

3. नृदक्षिण—(S'as'vat—) has the force of constant repetition. Here it may even be rendered as "every day" (see line 9.) कायवृद्धिर्वा—(*Kāyavṛddhiḥ*) The translation adopted here is in accordance with the gloss of Bālabhāṭṭi (see Bālam. Sk. p. 54 l. 14-15) Bṛhaspati & Vyāsa (see Sacred Books of the East &c. XXXIII p. 67 note).

Dr. Jolly, however, translates it as—"Without diminishing the principal", and the translation appears to be based on the following gloss by Asabhāya, "अथ कायेचरते । .....द्विषचतुर्वचसं नृदक्षिणः नृदक्षिणवृद्धिर्वा कृत्वा नृदक्षिणवृद्धिर्वा कृत्वा ।"

becomes the interest. *Anyathā*, 'otherwise' when the money is advanced without security, two, three, and four *paṇas* shall be the interest payable by the Brāhmaṇa and others in the respective order.

- 5 Vyāsa states a special rule: "In the case of a loan with security monthly interest is declared to be the eightieth part; a sixtieth part when there is a surety; and two per' hundred, on a loan without any security."

- 10 Brhaspati' mentions the kinds of interest: "The *Kāyikā*, (by bodily labour), the *Kālīkā*, (periodical interest), and next, the wheel interest—*Chakra vṛddhi*—(compound interest), the *Kāritā* (or stipulated interest), the hair interest the—*Sikhā*—and the interest by enjoyment *Bhoga*," *Kāyikā* 'by bodily labour', e.g. by milking and driving cattle, and such other labour; *Kālīkā*, 'periodical' e. g. every month. Interest upon interest is wheel or compound interest; that which was stipulated by the debtor himself is *Kāritā*; the hair-interest is that which is taken every day; *Bhoga*,  
15 'by enjoyment' such as the rent of a house, profit, or the fruit of crops &c. Brhaspati': "Hair interest, bodily interest, and interest by enjoyment shall be taken by the creditor so long as the principal remains unpaid." (37).

- 20 The Author mentions other varieties of interest by reference to particular (classes of) debtors

### Yājñavalkya, Verse 38 (1.)

Persons (usually) travelling through forests should pay ten per cent, and those who travel by sea twenty per cent.

- 25 Mītākṣharā:—*Kāntāra* means a forest; those who go there, are *kāntāragāḥ*, persons travelling through forests. Those who borrow money by interest and enter dense forests which involves' danger to life and property should pay ten per cent and those, who go to the sea, *samudragāḥ*, twenty per cent., also per  
30 month.

The meaning is this: The creditor should take ten per cent from those who go to the sea, as there is a danger of the loss of the principal also.

1. i. e. fiftieth part.

2. Oh. XI. 5, 6, 7.

3. Oh. XI. 11.

1. Lit. which creates an apprehension about the destruction of life and property.

Now the Author describes stipulated (Kāritā) interest

Yājñavalkya, Verse 38 (2)

10

Or all should pay what they had agreed to among all classes.

Mitākṣharā :—Sarve vā, or all, Brāhmanas and other debtors whether secured or unsecured, swakṛtām, what they had agreed to i. e., promised by them, vṛddhim, sarvāsu jātishu dadyuh, interest among all classes, should pay. Sometimes interest is payable even when not stipulated for. As says Nārada<sup>1</sup>: "No interest shall ever be charged on friendly loans, unless there is an agreement to that effect. Even if there be no agreement, interest accrues on such loans after the lapse of half a year." 15 20

For one, however, who goes to another country after taking a loan for use, Kātyāyana<sup>2</sup> has laid down a rule thus :—"If one after obtaining a loan for use without returning it goes to foreign lands, that loan of his will be charged with interest after the lapse of a year." For one, moreover, who after obtaining a loan for use and without returning it, even when he was asked, goes to a foreign region, the same Sage<sup>3</sup> has laid down the rule viz. "If, one goes out to a foreign region without returning a loan which he had obtained, and which was demanded back, that loan becomes chargeable with interest after the lapse of three months." 25 30

He also, who while remaining in one's own country, does not return a loan for use when asked for, should be made to pay interest by the king from the date of the demand. As has been said<sup>4</sup> "He, however, who while remaining in one's own land, does not return a loan for use when asked for, should be made to pay interest from that time, even though it was not stipulated and he be unwilling." 35

1. Oh. I. 108.

2. Verse, 502.

3. Verse, 503.

4. By Kātyāyana, Verse 504.

Nārada<sup>1</sup> has laid down an exception to the unstipulated interest, viz: "The price of a commodity, wages<sup>2</sup>, a deposit, a fine which had been fixed, a gift without consideration, a gambling<sup>3</sup> debt, none of these bear interest unless specially provided for." 5 Avivakṣhitâḥ, unless specially provided for, i.e. unless stipulated for.

## S'ūlpāṇi.

## Yājñavalkya, Verse 38.

By a mountainous road or by the sea when one goes out for trade, these when there is no security, should pay ten paṇas and twenty paṇas 10 respectively. On account of the contingency of the loss of the principal itself is the payment of larger interest.

The Author mentions another alternative to the rule stated in the text: "In the order of the Varnas, two, three &c." *dadyurveti*, 'or should pay &c.'

## 20 Yājñavalkya, Verse 38A.

Interest upon interest is compound interest; interest payable every month is periodical interest (*Kāṭikā*). When stipulated by himself, it is stipulated interest (*Kāṭikā*). The (*Kāṭikā*) is by bodily labour.

This is explained by the statement itself. In some books this 25 verse is not stated.

## \* Page 29.

Now the Author mentions special kinds of interest by reference to particular things. The interest on the females of beasts is their progeny itself.

## 25 Yājñavalkya, Verse 39 (first quarter.)

In the case of female beasts the interest is their progeny itself.

Mitākṣharā:—Of the females of beasts, *santatireva*, 30 *progeny itself*, is the interest. Such a transaction would be possible in the case of one who is unable to maintain the female beasts and who wishes them to be well-fed and to bear progeny. The creditor will have the milk and labour.

1. Introd. II. 26.

2. *यति*, is a better and correct reading. The reading in the print viz. *यति* is not correct.

3. Yājñavalkya II. 37.

When something is given as a loan and the loan has remained over for a long time even without recovering any interest, what is the maximum limit for the accumulation of interest in several kinds of properties? (Anticipating this question) the Author proceeds:—

Yājñavalkya, Verse 39 (second quarter.)

5

The utmost limit for (the accumulation of) interest is eight-fold in the case of a fluid, and fourfold, threefold, and twofold in the case of cloth, grain and gold respectively (of the principal loan advanced).

Mitākṣharā:—*Rasasya, of a fluid, i.e., in the case of oil,*

10

ghee, etc., upon which no interest has been Accumulation in received, and the loan has remained standing for the case of fluids etc. a long time, the interest as agreed to by the parties would be accumulating—such accumulation would be *aṣṭaguṇā, eightfold, parā, utmost limit, i.e.,* cannot accumulate beyond that. Similarly of *cloth, grain, and gold, wastradhānya-hiranyānām*, would respectively be fourfold, threefold, and twofold the utmost accumulation.

15

Vasiṣṭha,<sup>1</sup> however, has mentioned a threefold increase in the case of fluids—"Gold (taking) double (its value on repayment and) grain trebling (the original price). (The case of) fluids<sup>2</sup> has been explained by (the rule regarding) grain, as well as (the case of) flowers, roots and fruit. In the case of these three things which are sold by weight the increase will be eightfold."

20

Manu<sup>3</sup> on the other hand, in the case of grain and also flowers, roots and fruits has mentioned a fivefold increase. "On grain, fruit, wool or hair (and) beasts of burden it does not increase more than five times (the original quantity). *S'adaḥ, grain*, the produce of the field, such as flowers, roots, fruits, etc.; *lavah, wool or hair*, the wool of a goat; the hair of the *Chamari* Cow, etc; *vāhyah, beast of burden*, the ox, horse, etc, i.e., the accumulation of interest in the case of grain, fruit, wool, or hair and beasts of

25

30

1. Ob. II. 44-47.

2. Dr. Bühler translates रसः (*Rasāḥ*) as flourishing substances.

3. Ob. VIII. 151.



burden does not extend beyond a fivefold (of the principal). There too, the rule should be applied after considering the capacity of the debtor as well as the state of things at the time, such as famine, etc. :

- This<sup>1</sup> (rule) moreover is to be understood as applicable in the  
 5 case of one transaction and one payment. If there are separate transactions with different persons, or even if the person is the same but there are different transactions on more than one occasion, gold, etc., would indeed increase as before, even beyond the twofold and and other limits. And even in a single transaction, when the  
 10 interest is recovered daily, monthly, or every year, and thus it is not<sup>2</sup> possible that the amount payable by the debtor might become twofold, the amount as made up of the interest recovered before, does certainly increase beyond (the) twofold (limit). As says Manu<sup>3</sup> "In money transactions interest paid at one time (not by  
 15 instalments) shall never exceed the double (of the principal)." "Recovered<sup>4</sup> at one time" is also another reading. *Kusida* is money utilised for accumulation. Increase of that is *Kusida-Vṛddhiḥ*; (such an increase) does not exceed i.e. does not rise beyond the double, if paid at one time, i.e. not at one time. It  
 20 exceeds beyond the double when the dealings are with different persons and give rise to separate transactions.

- In the case where the reading is, "recovered<sup>4</sup> once", it should be explained to mean that the interest would exceed the double when recovered in instalments from the debtor every day, every  
 25 month or every year. Moreover it has even been said by Gautama<sup>5</sup>.—"If in a transaction the loan remains outstanding for a long time, the principal may be doubled." (Here) by the use of the singular number in "a transaction" (*prayogasya*) an increase beyond the double appears to be intended in the case where the  
 30 transactions are different. By the use of the expression "outstanding for a long time" (*chirasthāne*) an increase beyond the double has been indicated in the case where the interest has been recovered in small quantities<sup>6</sup>. (39)

1. See *Digdama* vs. *Ramchandra* 20 Bom. 611-613.

2. Read द्विगुणसंख्या for द्विगुणसंख्या L. 20 page 29 see Bālabhāṭṭi Sk. P. 57. L. 1. 3. Ch. VIII. 15. 4. एकाग्रता. 5. Ch. XII. 31.

6. In other words it does forbid capitalisation of interest see *Sukhlal* vs. *Bapu* 24 Bom. 305.

## Viramitrudaya

Now, of the Chapters on *Vyavahāra* to be expounded, following Mann and others such as in the text "of these, the first, the Recovery of Debts", first in regard to the recovery of Debts, technically dealt with by Nārada thus: "A debt which must be paid, and that which may not be paid, by whom, where, and in what way to be paid, and the rules as to the advance and the recovery of loans, are said to make up the (title) 'Recovery of Debts, (1) (and) It is called *kusida*'; because by it is their living (secured) by the money-lenders. (98)" The Author points out the rules of adjustment by the end of the Chapter. There, first the Author States the (rules as to) interest

## Yājñavalkya, Verses 37, 38, 39.

*Sabandhake r̥ṇe*, 'in a debt by a pledge', the amount invested such as gold, &c., will be liable for two, three, four and five per hundred, respectively in the order (of the classes). Therefore the result is that by a Brāhmaṇa debtor who has taken a loan of a hundred of gold, &c., with a pledge, should be paid every month two of gold, &c.; by a Kṣatriya, three of gold, &c., by a Vaiśya, four of gold, &c., and by a Śūdra, five of gold as interest to the creditor. Similarly also, by a parity of reasoning, it should be understood that in a debt with a pledge, where an eighteenth part is the interest, for a hundred of gold and the like, less by two māśas, interest should be at two (per hundred) and onwards.

"Even when there is no pledge, but there is a surety, when it is without transfer, two per cent, per month has been stated". *Sāṣṭhabhḍgaḥ*, 'together with its eighth part; of the eighth part, of the eightieth part'; together with that, the eightieth part. Here also in the case of a Kṣatriya debtor and the like a larger rate is to be understood, by a parity of reasoning.

*Kāntāragḍh*, 'travelling through forests' for a larger profit; debtors who are in the habit of trafficking through forests and the like places

## 1. Ch. I. 1.

2. Ch. I. 98. Lending money at interest. Brhaspati (XI. 2) derives this word thus: कृत्स्नपण्यद्वयेन विनिर्गतेः प्रयत्ने । चतुर्थे वासने कृत्स्नपण्यः सृष्टम् ॥ which however is characterised by Dr. Jolly as fanciful. The rule of the Mahomedan law, however, laying a ban against interest is expressive of the same sentiment.

3. For this text, no Author is quoted; nor is the text quoted in full. From the comments of *Mitramiśra*, the word सृष्टि appears to be in the omitted portion. This text has a resemblance with the text of *Yājñ* which runs thus: सृष्टे मास आसीतः षष्ठो मासः सप्तमकः । विनायने द्विकृतं व्यासज्ज्ञानं वदद्मः ॥ (see *Vyavahāra Mayākhya* p. 75 l. 3).

shall pay *s'atam dāśakam*, 'ten per cent.', i.e., hundred plus ten. Those of the sea, however, with the object of making big gains being in the habit of journeying over the sea, twenty per cent., i.e., twenty plus one hundred, should pay every month. Thus the conclusion is that for a hundred of gold, those resorting to the forests should pay ten of gold, and the seamen, twenty of gold.

Where, however, a higher or a lower rate of interest than what is stated above has been agreed to between the debtor and the creditor, there, that interest, *sarva*, 'all', the Brāhmaṇa and other debtors, *sarvasu jātiṣu*, 'among all classes', as far as the mixed classes of creditors should pay.

Of the hypothecated beasts such as the cow and the like, or women, such as a female slave, &c., progeny itself is the interest for the mortgagor of the cow, &c. Here according to Bṛhṇākara it should be understood that in the case of the mortgagor who is unable to maintain them, the maintenance and the progeny of the cow, &c., and the female slaves, etc., is expected, and of the mortgagee the milk and the service are incidental to the pledge. Others, however, explain that in the case of the cow, the female slave, etc., deposited as a pledge, the owners of the cow, etc., the debtors should pay the interest, and when that is not possible the progeny itself is (to be regarded as) the interest.

Now the Author states the highest rates of interest: Of a liquid, such as clarified butter, etc., when pledged as for a debt, when remaining over for a long time, the interest shall increase up to eight times. By the word *para*, 'highest', is indicated that in the case of an increase in the fields, etc., even when it is possible to measure it, it is excluded. Similarly, onwards, of the cloth fourfold, of the grain three-times, and of gold two times is the highest increase.

Here, in connection with the portion relating to increase, Bṛhaspati<sup>1</sup> says: "Interest has been declared to be of four sorts; by others it is stated to be of five-kinds; and by others still, it has been declared to be of six kinds. Learn these by their characteristics: *Kāyikā* (bodily interest); and the *Kālīkā* (periodical interest); similarly also *Chakratyaddhikā* (compound interest) is another; then the *Kṛtīkā* (stipulated interest), *S'ikṣātyaddhikā* 'hair interest', and similarly also the *Bhogalābha*, interest by enjoyment. Of these, the characteristics and

1. i. e. although the object pledged, may actually increase more than eight-fold, and although it is possible to assess such increase, any higher amount is excluded by this rule.

2. Ch, XI. 4, 5.

Yājñavalkya]  
Verses 37-39.]

other details, out of fear for prolixity, are not being expounded here, but should be followed in other Smṛtis<sup>1</sup>.

Here interest at the eightieth part and the like rate has been stated to be legal-interest, since Manu<sup>2</sup> has stated: "By taking two or three per cent, one does not become a sinner<sup>3</sup> for gain." By *swakṛtām*, 'what was agreed to by himself', there will not be a higher interest than what was stipulated for. That also is legal. More, however, would be against the law.

Hārta also, "For twenty-five *puṇḍras*,<sup>4</sup> the interest for a month is eight *paṇas*<sup>5</sup>; thus it holds on for two months or four months until it reaches the double, where it stands; this is legal interest; by this, one does not swerve from the law," 'reaches the double', i.e., becomes double; 'where it stands', i.e., does not increase more than that. The legality is in regard to the aforestated interest always for Vais'yas. The word *adi* indicates that it holds in the case of others also.

Compound interest and the rest are certainly illegal. So says Bṛhaspati<sup>6</sup>: "The use (of the pledge) after twice (the principal has been realised), and the compound interest also which is exacted, and also the original principal together with interest, that is usury, and is reprehensible."

In regard to the highest interest, Manu<sup>7</sup>: "In many transactions, interest paid at one time, shall never exceed the double (of the principal); on grain, fruit, wool or hair (and) beasts of burden it must not exceed five times (the original principal)." 'Fruit', i.e., the crop. 'Wool or hair', what may be cut, sheared, such as hair, other than those of the sheep. "For gems, pearls and coral, for gold and silver, for the products of fruit, or of an insect, or for wool, the interest stops when it doubles the debt", vide the text of Kātyāyana<sup>8</sup>: "*Kaiṣam*, 'of insect', i.e., produced from an insect.

• Gautama<sup>9</sup>: "Interest on products of animals, hair, on products of a field, and on beasts of burden, (shall) not (be) more than five times

1. Note e. g. the following from Bṛhaspati XI. 6, 7, 8.

कायिका फर्मसंयुक्ता मासप्रत्या तु कायिका । इदं हि दियकद्विः कायिका कयिता कृता ॥  
प्रत्यहं घृणे वा तु शिख्यद्विद्वत् सा सृता । घृताक्षयः शतः सखाद्विगतामः प्रकीर्तितः ॥  
शितेष्वहर्दिने त्रित्वे शिख्यद्विद्वत्तु सा सृता । श्रुते दत्ते तत्पेनेन शिख्यद्विद्वत्तु सा सृता ॥

2. Ch. VIII. 143.

3. Does not expose himself to the charge of usury.

4. & 5. Both are coins, severally valued at 80 cowries and otherwise.

6. Ch. XI. 12.

7. Ch. VIII. 151.

8. Verse, 510.

9. Ch. XII. 33.

(the original).” ‘Products of animale’, other than ghee, such as milk, etc.

“For all sorts of oils, and for the different kinds of spirituous liquors, and on clarified butters, the interest has been declared to be octuple, as also for molasses and salt” vide the text of Kātyāyana’.

Brhaspati: “On precious metals, the interest may make (the debt) double; on clothes and baser metals, treble; on grain, quadruple has been declared; so also on vegetable products, beasts of burden, and wool or hair”. ‘Vagatable products’, products of the field, other than corn, such as fruit, etc. Also: “It has been stated to be quintuple on pot-herbs; sextuple on seeds and sugar-cane; and on salts, oils and spirituous liquors, the interest has been stated to be octuple; also likewise on raw sugar and honey, if the transaction be of long-standing.”

In the case of corn, the mention of a double and various other rates is to be determined by regard to the price (into money). Thus, at the time of the advance, before the appearance of the crop a particular kind of price, if after the appearance of the crop it is reduced a little, then double, in case it is reduced even more than that, treble, further more than that, quadruple, and further on, at the utmost reduction, quintuple, it becomes.

However all this statement about the increase of interest is by weight only, in accordance with the text of Hārīta: “In course of time, double the quantity of grain increases as if treble.” Or, in the order of the *varṇas* are the four kinds of increase to be adjusted. According to the Śiṣṭas: “If the grain becomes treble, according to the time and prosperity”. In the case of beasts of burden, etc., by regard to the differences in the price, time, and the place, the different rates of interest are to be settled. Thus enough of prolixity.

Now the prohibitions regarding interest: “The price or value of a commodity, wages, a deposit, a fine, what has been usurped, etc. What has been idly promised, and what has been won at stakes at dice; these do not yield interest, except under a special agreement (to that effect)”, ‘a commodity’, i.e., a saleable commodity; ‘wages’,

1. Verse, 511.

2. Oh XI, 13.

3. Oh. XI, 14, 15.

4. Nārada II, 36.

5. आनिद्धादिकम् other readings are (1) यथाप्राप्तम्—‘what has been abandoned (by one and found by another); Dr. Jolly’s edition (2) यथा प्रसज्यते: (a fine) which has been ordained (V. Māyūkha).

*i.e.*, salary; 'usurped', *i.e.*, obtained by fraud, deceit, etc.; 'an idle promise', a donation without regard to *dharma*; 'by dice', in the course of gambling what is staked; these, unless specially agreed upon, *i.e.*, where interest has not been determined upon, do not increase.

Kātyāyana: "On hides, crops, wines, and one's gambling debts, price of commodities, always in all these, and on the bride-price of women, there can never be interest; so also on debts incurred as sureties". 'Incurred as sureties', for a surety made liable for payment on account of suretyship. 5

Samvartan: "No interest can be charged on woman's property, on profits, and on a deposit remaining ambiguous, also for a suretyship, if not specially stipulated". Vyāsa: "Suretyship, a pledge which has been fully enjoyed, (and) money not accepted even though tendered, do not carry interest against one who has approached; (as also) a fine, and a bride's price which had been promised". 'Of one who has approached', *i.e.*, of the debtor who is under the control of the creditor—which the Author himself states hereafter by the text: 'When tendered, does not accept, etc.' (37, 38, 39). 10 15

### S'ūlapāṇi.

#### Yājñavalkya, Verse 39.

When a she-goat and the like, or a female-slave and the like, are pledged as security, and no other interest is possible, their progeny itself is the interest. In the case of oil &c., when pledged for interest, the utmost interest is octuple together with the original *i.e.* the additional interest. In the case of clothes &c., in the order of enumeration, quadruple, treble, and double is the utmost interest. 20 25

As to the text of Brhaspati: "On gold, the interest may make double; on clothes and base metals treble; on grain, it is stated to be quadruple, and so also on edible plants, beasts of burden, and wool or hair", that is to be explained, by regard to a long standing loan and a loan of short duration. Śadaḥ, 'edible plants' *i.e.* the fruit of trees &c. *Wāhyo*, 'beasts of burden,' such as a bullock and the like. *Lavaḥ*, 'hair,' such as the *Chāmara* &c. (39). 30

Rules regarding loan transactions have been laid down (above). Now follow the rules regarding the recovery of property advanced as a loan

1. Verse, 505.

2. Yājñ. II. 44.

3. Ch. XI. 13.

## Yājñavalkya, Verse 40.

One (a creditor) would not be blamed by the king for trying to recover an acknowledged debt; and if the debtor complain to the king while the debt is being recovered from him, he should be fined and made to pay (back) the loan.

Mitākṣharā :—Prapannam, *acknowledged i. e.* money admitted by the debtor, or proved by means of witnesses &c; sādhanam, *trying to recover, i. e.* a creditor recovering by Dharma and such other means; nṛpaterna vāchchyaḥ, *would not be blamed by the king i. e.* will not be prevented.

The Dharma and other means have been pointed out by Manu<sup>1</sup>: "By moral suasion, by a suit at law, by deceit, or by starvation<sup>2</sup>, a creditor may recover property lent, and fifthly also by force."

*By moral suasion, Dharmena, i. e.* by affectionate words and a straight talk. *By a suit at law (Vyavahārena) i. e.* by such means as witnesses, documents &c. *By deceit (chhalena) e. g.* by taking ornaments &c. under the pretext of some ceremonial celebrations &c. *By starvation (acharitena),* by abstaining from meals. By the fifth, viz. by force *i. e.* by imprisonment with iron fetters &c. (*i. e.* to say) money advanced for accumulation (of interest) should be recovered to oneself by these means.

By saying "For trying to recover an acknowledged debt" the Author indicates that he should be prevented by the king, from recovering a debt which has not been acknowledged by the debtor.

1. OR. VIII. 49.

2. आचरितेन च is another reading. Dr. Buhler translates it as a customary proceeding, which he describes as—killing one's (?) wife, children, and cattle and sitting at the debtor's door, or by the creditor's starving himself to death. This is based on the following text of Bṛahaspati cited by Kulluka:—  
"आचरितेन च कृत्वा ह्यपि वेदानम् । यत्रापि आचरितेन ह्येव तदाचरितमुच्यते ॥" It will be clear that this is the process of sitting Dharma or making the Trāgā and it is doubtful how far it deserves the exalted name of "A customary procedure." In this view आचरितेन = अमोजनेन (by starvation) is a better and more expressive reading.

This very thing has been made clear by Kātyāyana<sup>1</sup> thus: "A creditor who harasses a debtor who is demanding a trial, shall forfeit his claim and pay an equal fine".

Where, however, a claim has been (made to be) admitted by *Dharma* and other means, and if then while the amount is being demanded or recovered, the debtor goes to the king and complains against the creditor for trying to recover his due, that debtor becomes liable to be punished with a fine according to his capacity; and, moreover, he is made to pay the amount to the creditor. The modes of compulsion by the king have been thus indicated:<sup>2</sup> "The king should make a Brāhmaṇa pay the creditor only by gentle persuasion, others according to the usage of the country. The wicked should be made to pay by compulsion. An heir and a relative also should be made to pay by recourse to deceitful tricks". The text:<sup>3</sup> "If the debtor complain to the king while the debt is being recovered", should also be understood as a counter-illustration of the text: "In a way which is a violation of the (law of) Smṛtis and usage."<sup>4</sup> (40)

### Viramitrodaya.

Now the Author describes by four verses the process of recovering debt.

### Yājñavalkya, Verse 40.

*Prapañnam*, 'acknowledged', i.e., admitted by the debtor; *artham*, 'debt'; *sādḥayan*, 'trying to recover'. "By moral suasion, by a suit at law, by artful management, or by starvation, a creditor may recover property; and fifthly also by force" by the methods as thus stated above by Mann,<sup>5</sup> when recovering back, the creditor, *nṛpater na vāchyō bhavet*, 'should not be blamed by the king'; i.e., will not be prevented by the king.

*Sādḥyamānaḥ*, 'while the recovery is being made', i.e., by the method stated being applied against him, with a view to ward it off. *nṛpam gacchḥan*, 'going to the king', the debtor when not

1. Verse, 569.

2. By Kātyāyana, Verses 557, 558; other readings are, राजानं स्वामिनं...

निविशन् सुदरं वापि छलेनैव प्रसाधयेत् ॥ ५८० ॥ इतिजः कर्षकाश्चैव क्षिप्रिणश्चात्रवीर्यदुः । देशाचारेण दायाः  
सुदुष्टान् संवीक्ष्य दापयन् ॥ ५८१ ॥

3. Yājñ. II. 40.

4. Yājñ. II. 5. (See p. 645, II. 19-20).

5. Ch. VIII. 50.



incapacitated should be fined and should be compelled to pay the amount to the creditor. By the use of the word *cha*, 'and', is added that even though without making a complaint to the king, he does not pay the amount through turpulence, etc., the debtor should be compelled to pay the amount, and should be punished also. (40).

### B'ûlapâṇi.

#### Yājñavalkya, Verse 40.

While a creditor is trying to realize an admitted claim, if the debtor complains to the king, he should not be charged thus viz. "How do you do this?" When the debtor is being compelled by force, and he complains to the king, then he should be compelled to pay the amount to the creditor, and the penalty should be taken by the king himself. (40).

When several creditors appear simultaneously, against a debtor who is one only, in what order should he be made to pay by the king? (Anticipating this question) the Author says:—

#### Yājñavalkya, Verse 41.

A debtor should be made to pay his creditors in the order of the receipt of the loans; after paying off a Brâhmana (creditor), then alone the ruler of men (should be paid).

Mitâkṣharâ:—When the creditors are of the same class, the debtor should be made to pay, by the king, the creditors in the same order in which the loans were taken. When, however (the creditors) belong to different classes, the Brâhmana (should be paid) first, and then the rest in order. (41)

### Viramitrodaya.

When there are several creditors, in what order should he be made to pay the debt? So the Author says

#### Yājñavalkya, Verse 41.

Among creditors of different castes, first having given to the Brâhmana, although incurred after, that of the Kshatriya, and thus circumstanced he should be made to pay the debt to a Vaisya. There also, the special point, by a parity of reasoning, is that after paying the Vaisya, then the debt of the Śûdra should be ordered to be paid. Of a

learned Brāhmaṇa, as also of a king the debt should be paid even without paying any other debt excepting that of a Brāhmaṇa.

That says Kātyāyana<sup>1</sup>: "But when there are several debts, whatever is incurred first, should be paid first, but that owing to a king should be paid after that owing to a learned Brāhmaṇa (514). Where several loans are incurred on the same day, in such a case one should put the debt on an equality, as far as the acceptance, maintenance, and profit are concerned; otherwise, however, in the order, (513). When a creditor established that a particular commodity was secured with his money, that money should be paid by the debtor to him alone and not otherwise (515)". The king's debt should be paid even before that of the learned Brāhmaṇa, having regard to the order stated in the text<sup>2</sup>. (41).

### S'ūlapāṇi.

#### Yājñavalkya, Versa 41.

When there are several creditors, the debtor should be ordered to pay the debts in the order of their acceptance. When the Brāhmaṇa and the Kṣatriya claim together, the Brāhmaṇa's should be paid (first) although incurred later, and afterwards should be paid those of the Kṣatriya and others. (41).

When, however, a creditor is weak and unable to recover an acknowledged claim by Dharma and such other means, and the amount is recovered (for him) by the king, in such a case the Author mentions a fine for the debtor and payment of costs by the creditor.

#### Yājñavalkya Verse 42.

A debtor should be made to pay by the king to himself ten per cent of the amount recovered; and a creditor who has won his case should be made to pay five per cent.

Mitākṣharā :—Adhamarṇikāḥ, the debtor, rājñā, by the king, sādhitāt, of the money recovered, from the amount acknowledged; daśakam s'atam, ten per cent; dāpyaḥ, should be made to pay. The king should take from the debtor in the shape of a fine, a tenth portion of the amount recovered from the acknowledged amount. This is the import.

1. Verses, 514, 513, 515.

2. This remark is not intelligible, for the वटकम् is quite the reverse. The reading should be अविपश्य वृत्तम् and not अविपश्यम्, as it is.

A creditor, however, *prāptārthaḥ*, who has won his case, *dāpyaḥ*, should be made to pay, *panchakam s'atam*, five per cent, in the form of costs. The meaning is that the king should take a twentieth portion of the amount recovered by way of costs. In the case of a realisation where the debt is not acknowledged, the distribution of fine has been indicated in the text: "Where, upon a denial (by the defendant) a claim is proved, etc." (42).

### Viramitrdaya.

When even an admitted debt the creditor is unable to recover, and if he recovers through the king, then a twentieth part should be taken by the king from him; while stating this itself, the Author states the amount of the fine for the aforesaid debtor

### Yājñavalkya Verse 42.

*Rājā*, 'by the king', *sādhitāt*, 'of recovered', i.e., made to pay, *daśakam śatam*, 'ten per cent', to himself, the debtor should be compelled to pay. In short, if one hundred gold are recovered, ten gold should be compelled to be paid. The creditor also who has secured his claim should be made to pay to himself by the king five per cent, that is to say, for a hundred of gold, five of gold should be caused to be paid.

By the word *tu*, 'however', is separated the payment first to the creditor when obtained. By the word *api*, 'even', if penalty do not exist as a motive cause, it is suggested that the payment is meant as indicative as a means (of the recovery). At some places, the reading is *ki*. There also the same is the sense. (42)

### S'ūlapāṇi

Yājñavalkya, Verse 42.

If the debtor who in the court having denied the claim by declaring "I do not owe", afterwards admits, he should be compelled to pay to the king at ten per cent from the established claim as a fine. (42).

The rule as to a wealthy debtor has been mentioned. Now the Author mentions a rule in the case when the debtor is poor

### Yājñavalkya, Verse 43.

An insolvent debtor of a lower class should be made to work for his debt; a Brāhmaṇa insolvent, however,

should be made to pay by instalments according to his gains.

**Mitākṣharā:**—A Brāhmaṇa creditor and others (belonging to superior classes) should, for a debt, *ṛnārtham*,

About a pauper *i.e., for the discharge of a debt*, cause the debtor 5  
debtor. of a lower class such as the Kṣatriya and others who has become *parikṣhīṇam*, *insolvent, i.e.,* moneyless, to do their usual *karma, work, i.e.,* agreeably to (the usage), *kārayet, should be made to do*, of their caste and without detriment to (the interest of) their family. A Brāhmaṇa, however, if 10  
*insolvent, i.e.,* moneyless, should be made to pay, *s'anaiḥ s'anaiḥ, by instalments, yathodayam, according to his gains, i.e. according* as may be possible.

\* Page 31.

Here the reference to a lower class is indicative also of an 15  
equal class; and therefore a debtor of an equal class also, if insolvent, should be made to do the work which is proper for him. The mention of a Brāhmaṇa is also indicative of the superior class, and therefore Kṣatriyas and others though insolvent should be made to pay their Vais'ya and other creditors (of a lower class), by instalments and 20  
according to their ability. This very thing has been made clear by *Manu*: "Even by personal labour shall the debtor make good (what he owes) to his creditor, if he be of the same caste, or of a lower one; but a (debtor) of a higher caste shall pay it gradually." The meaning is that the debtor should by his conduct so transform himself into 25  
a position that the distinction of a debtor and creditor would become extinct. (43)

#### Viramitrodaya.

The Author states a rule in regard to a poor debtor

Yājñavalkya, Verse 43.

30

*Hinajātim*, 'of a lower class', *i.e.* not of a higher caste than that of the creditor, such a debtor *parikṣhīṇam*, 'insolvent,' *i.e.* moneyless, with a view to the liquidation of the debt, the creditor should cause *karma*, 'work' as desired by him, such as agriculture,

service &c. Kṛaye't, 'should cause to be done.' Brāhmaṇastu, 'a Brāhmaṇa' debtor 'however,' although 'insolvent' parikkṣiṇaḥ, yathodayam 'according to his gain' i. e. according to the acquisition of wealth, s'anaiḥ, o'anaiḥ, 'by instalments' i. e. should be made to pay even in small driplets so as not to be detrimental to the maintenance of his family and such other necessary duties, and even if he be equal in caste to the creditor, he should not be made to do work.

This is only indicallive. One higher than the creditor, such as a Kṣatriya &c., should also, when impoverished, be made to pay by small instalments, as the reason stated by the Author for causing work to be done is his belonging to a lower caste, and vide this text of Kūtyāyana' also: "Should make the Kṣatriya, Vaiśya and Śūdra of the same caste as his or of a lower caste make payment by work." Here, moreover, the liquidation of the debt by work is to be understood. (43)

### S'ulapāṇi

#### Yājñavalkya, Verse 43.

One of a lower caste, as compared with that of the creditors, should be made to do work appropriate to his caste. A Brāhmaṇa however in a similar condition should be made to pay as may be possible without detriment to the maintenance of the family. As says Manu': "Even by personal labour shall the debtor make good (what he owes) to his creditor if he be of the same caste or of a lower one; but one of a higher class shall pay it gradually." Here, 'of the same class' signifies one other than a Brāhmaṇa. (43).

#### Yājñavalkya, Verse 44.

When tendered, if a creditor does not accept back his amount lent, and if the same is deposited with a third person, it will not carry interest from that time.

Mitākṣharā:—Moreover, dhanam, an amount, pratyuktam, lent, at interest; diyamānam, being Money deposited tendered, by the debtor, if the creditor, out of a third person greed for interest, na grhṇāti, does not accept, and if the same is deposited in the hands of a third person by the debtor, then tataḥ, from that time,

i.e. after the deposit, *na vardhate*, it does not bear interest. If, however, even if deposited he does not give when demanded, then it carries interest as before.

### Viramitrodaya.

By way as it were of stating an exception to the law of interest stated above, the Author states the right of a Debtor

### Yājñavalkya, Verse 44.

When being 'offered', *diyamānam*, the creditor does not accept the amount of his debt through covetousness for interest &c., that amount of his should be deposited by the debtor with a third party. 10  
And that, thereafter i. e. after it is deposited with the third party, *na vardhate*, 'does not carry interest'. (44).

### S'ūlapāṭi

### Yājñavalkya, Verse 44.

So Samvarta: "No interest shall be charged on women's 15 property, on profits, nor on fixed deposits; on doubtful claims, also on a surety's liability, unless stipulated by oneself," 'fixed', placed between. (44).

Now the Author states *when* and *by whom* should a debt that ought to be paid, be paid

### Yājñavalkya, Verse 45.

A debt which however has been incurred by the undivided members for family purposes should be paid by the coparceners when the manager of the family is either dead or has gone abroad. 25

Mitākṣharā:—*Avibhaktaiḥ*, by the undivided members of the family; *Kutumbārthaiḥ*, for family

A debt incurred purposes; or by each separately; *yadṛnam* for family purposes *kṛtam*, a debt which has been incurred, that must be paid. debt the head of the family must pay. When 30  
he is either dead, prete, or has gone abroad, *proshite*; *rikthinah*, his coparceners; *dadyūḥ*, should pay.

1. कृताय—Thus where a debt was contracted by the manager and for a joint family concern, it will bind the members. *Gokul vs. Amarchand* 9 Bom. L. R. 1269; and so a trade debt incurred by a widow in management was held to be binding. *Sakardhai vs. Megajlal* 3 Bom. L. R. 738 (F. B.); see also *Sheo Pershad vs. Satip Lal* 20 Cal. 453; *Sham Sundar vs. Achhen Kumar* 25 L. A. 183; 27 All. 71. *Raghunathji Tarachand vs Bank of Bombay* 34 Bom. 72. *Suraj Baksh Singh vs. Raj Kedar Nath* 7 Luck. 565.

Virāmitrodaya.

Now, a debt, what kind should be paid by whom, and by whom also it should not be paid, the Author states that by seven verses

Yājñavalkya, Verse 45.

5 *Avibhaktaiḥ*, 'by the undivided members', such as the brothers, father, ect. *Kutumbasya*, 'of the family' in necessity such as maintenance &c., *arthe* 'purpose,' for the maintenance (of the family), *yadyṇam kṛtam*, 'what debt has been incurred', *ta*, 'that' debt, *ṛkṣinaḥ*, 'the co-perceners',  
10 i. e., the undivided brothers and the like all, *kutumbini*, 'on the manager of the family' i. e., the person who incurred the debt for a family purpose such as the father &c., *prete*, 'when dead', or *proṣhite*, 'has gone abroad', *dadyuḥ*, 'should pay'.

By the use of the word *tu*, 'however', is excluded a debt which has been incurred for a special purpose of his own, and which must be paid by  
15 him only, and not by others i. e., the co-perceners. (45).

S'ūlapāṇi.

Yājñavalkya, Verse 45.

Of the members living jointly, such as the uncle, nephew &c. by one if a debt is incurred for a family purpose, when that member has  
20 gone abroad or is dead, that debt, these should pay.

Manu says that what was contracted for the joint family, must be paid even by the divided members: "If the person contracting the debt be dead, and the money was appropriated for the purpose of the family, each must be paid by the members themselves even though separated." (45).

25 The Author states by an example by whom (a debt) should be paid

Yājñavalkya, Verse 46.

A woman need not pay a debt incurred by her husband or son; nor a father that (incurred) by the son;  
30 except when it is (contracted) for family purposes, nor likewise a husband that of the wife.

1. Thus a mortgage by a manager or even a father for starting a new business does not bind the others. *Bankers Bank Ltd. vs. Hari Naren* 54. All 564; *Guru Mukh Singh vs. Shri Ram* 17 Lah. 53. *Sabha Chand vs. Sambhu* 39 Bom. L. R. 118.

2. Ob. VIII. 167.





The Author will say<sup>1</sup> further on that a debt should be paid by sons and grandsons. He mentions by anticipation an exception to the rule.

### Yājñavalkya, Verse 47.

5 That which was contracted for the purposes of spirituous liquor, lust, or gambling, or which is due as the balance of an unpaid fine or toll, as also a gift without any consideration the son should not pay (such) paternal debt.

10 Mitākṣharā :—A debt which was contracted<sup>2</sup> for drinking surā, *spirituous liquor*. Contracted for kâma, *lust*, i. e. brought about by a passion for women. In dyûte, *gambling* i. e. brought about by a defeat (in it); dandāsulkayor, *avas'isṭam*, the balance due from a payment of fine or bride-price. Idle gifts  
15 vṛithādānam, *gifts without consideration*, what has been promised to rogues, hardes, wrestlers &c. As it has been said: "What has been given to a rogue, a hard, a wrestler, a quack, a liar, and a cheat, and to swindlers, itinerant singers and dancers and to thieves bears no fruit."

20 \* Page 32.

Such a debt, when incurred by the father, the son and others should not pay i. e. to the vintner and others.

Here from the use of the word 'balance' in the text "a balance of an unpaid fine or toll" it should not be supposed that the  
25 entire amount is to be paid. As Aus'anasa has said: "A son should not pay a fine or the balance of it, the (amount of the) toll or its balance, and also whatever is not legal or capable of being recovered by a suit." It has also been said by Gautama: that  
30 " (money due from a father on account of) a debt incurred for spirituous liquor, or a *sulka*<sup>3</sup>, or in gambling, or for amorous pleasures

1. Verse 50 p.

2. सुतापत्नेन i. e. सुतापत्नय Here the Instrumental has the force of the Dative. The instrumental denotes the हेतु under the वा. सू 'हेतु' 2-3-23. The example given in the फीसुद्धी is अययनेन दत्तति—where अययनेन is equivalent to अययनाय ।

3. अययद्वाकिकम्—see Durbar Kachar Odhs Lal vs. Kachar Harsar 32 Bom. 348 and cases cited in Gharpure's Hindu Law (1931 Ed. p. 232).

Where the liability of the father arose under a criminal offence e. g. theft Or. misappropriation Mahabir Prasad vs. Baldeo Singh 6 All. 234, Toshani Pal Singh vs. D. Cf. Agra 61, I. A. 350.

4. Ch. XII, 38.

5. Haradatta—interprets *Sulka* as bride-price. "सुलकं प्रतिश्रुत्य विवाहं कृत्वा पुनः तदुत्तरं न तच्छुल्कमभ्यादयति ।" *sulka* also means a tax, toll &c.

as also a fine shall not involve a son". The meaning is that they do not devolve upon a son. By this (text) a debt which should not be paid has been mentioned.

### Viramītrodaya.

Even a debt incurred by the father, sometimes need not be paid; 5  
that the Author states

### Yājñavalkya Verse 47.

For *Sura* 'spirituous liquor', and like causes, *kṛtam*, 'contracted',  
*daṇḍam*, 'fine', or *śulkaṃ* 'bride-price', as also the balance of it. Of the  
three words is formed the *Dvandva* compound as if it is a single word. 10  
*Vṛthā*, 'idle', without regard to *dharma*, what was promised to be  
given—all this (kind of) debt *paitṛikam*, 'incurred by the father', *iha*,  
'here', i. e., in satisfaction of a proceeding started in this world, *putro*,  
'the son', *na dadyāt*, 'need not pay'. For the father's emancipation  
in the other world, however, he may pay at his option. 15

By the use of the word *eva*, 'also', is excluded the non-payment  
of what was promised by the father for a religious purpose, vide the text  
of *Kātyāyana*: "Whether while at ease or in distress, when a gift  
has been promised for a religious purpose, and the donor die without  
completing the gift, his son should be compelled to make it good; of this 20  
there is no doubt."

By the use of the word *tathā*, 'similarly', are included  
merchandise, etc., mentioned by others, so says *Gautama*: "Sons need  
not pay a surety debt, a debt incurred in trade, the bride-price, drinking  
and gambling debts, as also a fine." 'Surety debt', i. e., an obligation 25  
incurred as a surety for appearance, or surety of assurance.

*Bṛhaspati*: "A debt incurred for spirituous liquor, or a  
gambling debt, an idle gift, a promise made under an amorous influence,  
or in wrath, a surety debt, or the balance of a fine, the sons should not be  
compelled to pay." *Vyāsa*: "The fine or the balance of a fine, the 30  
bride-price, or a balance of it need not be paid by the son, as also  
*na vyāvahārikam*, i. e., that which is not incurred in accordance with law."  
*na Vyāvahārikam*, 'not incurred according to law', which is excluded by  
the law, such as that which was caused to be entered into under  
compulsion. 35

Kātyāyana<sup>1</sup> explains what is incurred under an amorous influence, or in wrath: "Whether under a writing or even without it, what was promised, must be paid. What is promised to a woman of another should be known as a debt incurred under an amorous influence (564).

- 5 Where after causing injury in anger or having caused destruction of property, what was promised by way of pacification, that should be known as a debt incurred in wrath" (565).

Here, by the mention of a fine, comes to be included its balance; its repetition again, therefore, is intended to indicate that such should  
10 be made in the case of a very large fine; a small balance, however, need not at all be paid. According to Ratnākara it is deducible that in the case of a small fine even the entirety need not be paid. (47)

### S'ūlapāṇi.

#### Yājñavalkya, Verse 47.

- 15 The father's debts (incurred) for drinking spirituous liquor or for sexual intercourse with women belonging to others, incurred for gambling, as a penalty; the son should not pay. What has been admitted by the father as a debt to be paid is the 'father's debt'. A mother's debt the son need not pay. (47).

- 20 The Author mentions an exception to the text<sup>2</sup> "Nor a husband that of the wife."

#### Yājñavalkya, Verse 48.

- The debt of the wife of a herdsman, vintner, dancer, washerman or hunter should be paid by the husband;  
25 since their livelihood depends upon them.

Mitākṣharā:—Gopaḥ, *herdsman i. e. a cowherd*; śaundikah; *a vintner i. e. a liquor-manufacturer*; e'ailūṣaḥ, *a dancer, i. e. an actor*; rajakah, *a washerman i. e. a dyer of clothes*; wyādhaḥ, *a hunter i. e. pursuing the game*.

- 30 By the wives of these whichever debt is incurred that should be paid by the husbands Yasmāt, *since, vṛttih, their livelihood i. e. living; tadāśryā, depends upon them, i. e., dependent upon women*.

1. Verses 564, 565.

2. Yājñ. II 46 page 784. II. 28-29 above.

By specifically mentioning the reason (of this rule) viz. "since their livelihood depends upon them" it appears that others also whose livelihood depends upon women should also pay a debt incurred by the wife.

### Viramitrodaya

5

'Not the husband, that contracted by the wife, similarly'; thus it has been said'; the Author mentions exceptions in this

### Yājñavalkya, Verse 48.

*Gopaḥ*, 'herdsman' i. e., a cowherd; *śaundikaḥ*, 'a vintner', i. e., a liquor-manufacturer; *śailāṣho*, 'a dancer', i. e., an actor; *rajako*, 10  
 'a washerman' i. e., a dyer of clothes; *vyādho*, 'a hunter', i. e., one who subsists on hunted animals; the wives of these '*tāśām raṇam*' their debts'; *patir dadyāt* 'the husband should pay'; since, *teṣāṃ*, 'of these', i. e., of the cowherd and the rest, *vṛttir*, 'livelihood', i. e., maintenance, *tadāśrayā*, 'depends on them', i. e., is dependent on the wives. 15

Here the statement of the rule having been made with the statement of the reason, it appears that others also whose livelihood depends upon their wives, such as the fisherman, potter &c., should pay the debts contracted by the wives. (48)

### S'ūlapāṇi.

20

### Yājñavalkya, Verse 48.

On account of the rule having been stated together with the reason, the wives of foresters &c. also are included. (48).

The Author mentions the exception to the rule that "A wife should not pay a debt incurred by the husband".

25

### Yājñavalkya, Verse 49.

A debt agreed to by her, or which was contracted by her jointly with the husband, or by herself (alone), should be paid by a woman. A woman is not bound to pay any other debt.

30

Mitākṣharā:—By the husband who was either dying or proceeding on a journey, *pratipannaṃ*, a debt

A debt which *which was agreed to*, on being charged or was agreed to enjoined, such a debt of the husband, *deyam*,  
5 should he paid. *should be paid*. Likewise a debt which was incurred by the wife, *patyā saha*, *jointly with the husband*, even that, should be paid by the wife in the absence of the husband, when she is sonless. So also a debt which was incurred *swayameva*, *by herself alone*, should even be paid (by her).

10 It may be said:—"It need not be mentioned that the three kinds, such as a debt agreed to by the wife, &c., should be paid by her"; because there exists no doubt about<sup>1</sup> it.

The answer is that on account of the text<sup>2</sup>: "A wife, a son, and a slave—all the three are considered to be incapable of having property; whatever they acquire becomes the property of him to whom they belong", they are without any property; and a doubt may be created about the non-payment of agreed debts, &c., and hence the text: "A debt agreed to by a woman should be paid by  
15 her" has been mentioned. Likewise the text referred to above does not lay down the incapacity of women and others to hold property; inasmuch as the object of the text is to argue their dependence alone. Moreover, this will be made clear in the chapter on Partition.

25 It may also be said:—"Then it need not have been said that a woman is not bound to pay any other debt," because the non-liability

1. The Translation given here is in accordance with the two glosses viz., Bālabhāṣī and Subodhini. The better rendering of the Mitākṣharā would appear to be as follows: "That which was assented to by the wife acting under the wish of her husband who was either in a dying condition or was about to set out on a journey." This would make it a debt incurred by her but for and on behalf of her husband. The two glosses appear to indicate it as a debt incurred in the first instance by the husband, but of which the liability was subsequently undertaken by the wife when the husband was on his death-bed or about to set out on a journey.

2. i. e. about her liability to pay, on account of the agreement.

3. Manu VIII. 416.

for other debt follows from the principal rule itself.<sup>1</sup> To this the answer is that it is mentioned as an exception to the general rule contained in the text.<sup>1</sup>—"A debt agreed to by a woman should be paid by her, as also that which was contracted by her jointly with the husband." The purport is that *anyat*, *any other*, bad debt, covered by the text<sup>2</sup> "a debt incurred for spirituous liquor or for amorous passion, &c." should not be paid even if it had been agreed to or contracted jointly with the husband. 5

### Viramitrodaya

'Not' the wife, (a debt contracted) by the husband or the son', ending with this, it has been stated that a wife need not pay a debt contracted by the husband; there, the Author states a special rule 10

### Yājñavalkya, Verse 49.

A debt contracted by the husband, for whatever reason, what has been *pratipannam* 'acknowledged,' i. e., admitted by him as repayable by himself, that, or that which was jointly contracted along with the husband, or what was contracted by the wife herself, that must be paid by the wife; no other debt is a woman bound by pay. 15

'By the husband'—this includes by implication, 'by the son' also. As says Kātyāyana: "contracted along with the husband, or the son, or incurred solely by herself." Nārada: "Not the wife should pay what was contracted by the husband, similarly that contracted by the son. Or if by a husband on the point of death she is requested—"Oh dear, pay this," then even if not acknowledged, she should—if the woman has taken (his) wealth." (49) 20 25

### S'ūlapāṇi.

'Not' the wife &c., to this the Author states an exception

### Yājñavalkya, Verse 49.

By the words *yad, vā* &c., 'or that which &c.', vide the text of Kātyāyana: "With the husband, or along with the son &c." Kātyāyana: "By a husband who was about to die, when a woman was charged thus: "This debt should be paid by you", even though not agreed to, she should be made to pay if she is possessed of wealth". (49). 30

1. i. e. the one contained in the first three quarters of Yājñ. II. 49.

2. Yājñ. II. 47.

3. Yājñ. II. 46.

4. Verse, 546.

5. Ch. V. 16. also see Kātyāyana Verse 547.

6. Verse, 547.

The Author mentions again the threefold classification, viz. what debt should be paid, and at what time also, and when should it be paid

### Yājñavalkya, Verse 50.

- 5 When the father has gone abroad, is dead, or is immersed in difficulties also, his debt should be paid by the sons and grandsons; in case of a denial, when established by witnesses.

- 10 Mitākṣharā:—If the father, without paying a debt which is payable, *pretah*, *be dead*, or is gone to a distant country, or is attacked by an incurable disease by sons and and the like, then the debt incurred by him when grandsons. made known, (should be paid) by the son or the grandson; and even when there exists no  
15 property of the father, in their capacity as son and grandson.

- Here the order (to be observed) is also thus: in the absence of the father, the son, in the absence of the son, the grandson. When the son or the grandson, *ninhave*, *set up a denial*, a debt, *kṛte*, *proved* by (the plaintiff creditor) *eākṣhibhāvitam*, by means of *witnesses*,  
20 and others should be paid by the sons and grandsons. This is the (order of) construction.

\* Page 33.

- Here the text says only so much, viz. "When the father has gone abroad." The particular interval, however, should be allowed  
25 as mentioned by Nārada<sup>1</sup>: "Where the father, uncle, or the eldest brother has gone abroad, the son (nephew or younger brother) is not bound to pay his debt before the lapse of twenty years." And even in the case of death, he should not pay before he reaches the age of majority. After reaching the age of majority, however, he should pay.  
30 That period, moreover, has been indicated by the same Author<sup>2</sup>: "Up to the eighth year, a child is viewed in the same light as one in the embryo. A youth who has not reached the age of sixteen, is called a *Paugandā*. After that he is (considered as) a major and is independent in the absence of his parents."

1. Ch. I. 14.

2. Nārada Ch. I, 35-38.

Although after the death of the parents he becomes independent even through a minor, still he does not become liable for (the payment of) debts. As has been said<sup>1</sup>: "One, who though independent, has not yet attained (the age of) majority is not liable for a debt. For it has been laid down that (real) independence belongs to the senior; (and) seniority is determined both by capacity and age." Similarly a prohibition against an arrest or summons is also noticeable *vide*<sup>2</sup>: "One who has not arrived at years of discretion, a messenger, one about to distribute alms, one observing a vow, and persons immersed in difficulties, these persons must not be arrested, nor shall the king summon them (before a court of justice)". Therefore, "Hence every one standing in the capacity of a son, leaving aside his personal interests, should free his father from debts by (all) efforts, so that he may not (have to) go to hell." 'Every one standing in the capacity of a son' should be explained as 'a son who has attained the age of majority'. For (offering) a *śrāddha*, however, even a youth has authority, *vide* the text of Gautama *viz.*: "One must not make him (a child) recite Vedic Texts, except in pronouncing *Swadhā*<sup>3</sup>."

By the use of the plural number in "Sons and grandsons," (it is indicated that) if there are several sons who are divided, they should pay according to their respective shares. If they are undivided, and are living jointly in a body, giving the managership according to qualifications, it appears that the manager alone should pay. As says Nārada<sup>4</sup>: "Therefore, when the father is dead the sons should pay the debt each according to his share, when they are divided; or if undivided (it should be paid) by one who holds the lead (in the family)."

Here although, it has been generally said that 'the debt should be paid by sons and grandsons', even then a distinction should be observed that by the son the debt should be discharged together with interest similarly as the father would do; by the grandson, however, only the amount equal to the original

1. By Nārada Oh. I. 31.

2. Nārada Intro. I. 52.

3. Gautama II, 5. The expression "pronouncing *Swadhā*" includes by implication the performance of all exequial rites". (विश्वस्य सर्वस्य कर्मण्यपलक्षणम्) इत्यतः ।

4. Oh. I. 2.



principal and not the interest. *Vide* the text of Brhaspati:  
 "The debt of the father which has been proved, should be paid by  
 the sons as if it were their own (debt); the grandfather's debt should  
 be paid in an even amount; his (*i. e.* grandson's) son, however, is  
 5 not liable to pay any debt." <sup>1</sup> Here from the general use of the term  
 'proved,' the use of the term 'witness' in the expression "established  
 by witnesses" is by implication indicative of any means of proof.  
 Equal amount (*samam*) *i. e.* as much as was taken should be paid,  
 and not interest. His son (*tatsutaḥ*) *i. e.* great-grandson is not  
 10 liable to pay when he has received no property. This, moreover, will  
 be made clear in the next verse.

### Viramitrodaya.

In the case of a debt contracted by the father, or by the grand-  
 father, when neither is available for payment, by whom should it be  
 15 paid? So the Author says

### Yājñavalkya, Verse 50.

*Proṣhite*, 'has gone abroad' *i. e.*, is travelling; *prete*, 'in dead';  
*vyasane*, 'in difficulties' such as by an incurable disease or the like,  
*abhiplute*, 'immersed' *i. e.*, overpowered; *pitari*, 'on the father' or the  
 20 grandfather also; their 'debt' *ṛnam*; *ninhave* 'on a denial' *i. e.*, on a  
 concealment by the negotiator of the loan, or when disputed by the son  
 and the grand-son, *adhyadidhiḥ* 'by witnesses' &c.; and the like means  
 of proof; *bhadrītam*, 'established' *i. e.* proved by the creditor, such should  
 be paid by 'sons or the grand-sons', *putrapautreṣu*.

By the use of the word *api*, 'also', is included the taking on a  
 'renunciation', (प्राप्त्य), *vide* the text of Viṣṇu: "When the person  
 who borrowed the money is dead, or has become an ascetic, or has gone  
 out on travel for twelve years or more, the debt should be paid by the  
 sons or the grand-sons, and not by any further (descendants) if unwilling."  
 25

The expression 'for twelve years' has application where the  
 debt is incurred for other than a family purpose.

By the expression, 'by the sons or the grand-sons' are excluded the  
 great-grandsons, *vide* the declaration in the text "and not by any further  
 if unwilling".

1. Oh. XI. 49. But where ancestral assets have been recovered even a  
 great-grandson is liable, see *Masitallah vs. Damodar* 53 I A 204-212; 48 All. 518.

2. Oh. VI. 27.

Here Vyāsa<sup>1</sup> mentions a special rule: "A debt of the grand-father should be paid; a son should pay a liability incurred on account of surety-ship; he should be compelled to pay an equal amount; his son, however, must not be compelled to pay; this is certain". *Samam*, 'equal', i. e. without interest. 'His son', i. e. the son of him who has to pay an equal amount. (50). 5

## S'ulapāṇi

## Yājñavalkya, Verse 50.

When the father who has incurred a debt, is addicted to gambling, prostitutes, and other vices, or is attacked by an incurable disease or the like, as also when he has fallen, in a case of dispute, what has been demonstrated by witnesses and the like, should be paid. 10

So Nārada<sup>2</sup>: "When the father is dead, the sons should pay the debt according to their shares". Brhaspati<sup>3</sup> mentions a special rule: "The father's debt, when proved, must be paid by the sons as if it were their own; the grand-father's should be paid, (but) equal<sup>4</sup>; but his son, has not to pay at all". 'As if it were his own', i. e. with interest. 15

Kātyāyana<sup>5</sup>: "When the father is alive, but is oppressed by a disease, as also when he has gone abroad for twenty years, a debt contracted by the father should be paid by the sons". (50). 20

In the discharge of a debt, the debtor, his son and grandson have been indicated as the three persons who are liable; their order of liability has also been pointed out when they all co-exist. Now the Author mentions the order (of liability) when these and (others also) who are liable, exist together 25

## Yājñavalkya, Verse 51.

The heir who takes the heritage, should be made to pay his debts, as also he who takes the woman (of the

1. This is an important text as it lays down different kinds of liabilities and on different bases thus. (1) A son is liable to pay a surety-debt but only the principal, and not the interest (2) and so is a grandson liable to pay the grandfather's debt, only the principal, and that too for an ordinary debt, but not a surety-debt. (3) In either kinds of debts and persons, the liability does not extend to their sons. See however, note 1 on p. 794.

2. Ch. I. 2.

3. Ch. XI. 49.

4. i. e. without interest, see the text of Vyāsa and the note on p.

5. Verse 548.

deceased), or (failing these), the son when the parental estate has not gone to another. Of a sonless man, those who take the heritage (should be made to pay the debts.)

Mitākṣharā:—Property which belongs to another, but becomes one's own otherwise than by purchase etc, is (termed) rikthā, heritage. He who takes the heritage by inheritance is (called) a rikthā-grāhaḥ. He should be made to pay the debt, sa ṇam dāpyaḥ. This is the meaning. He who takes the property of another in the form of a heritage, should be made to pay the debts incurred by such a one, and not a thief etc.

He who takes the woman i. e. the wife, is a Yoṣhidgrāhaḥ. He should be made to pay in the same manner. Whosoever wife a man takes, that man should be made to pay the debts of him. The wife has been specially mentioned as it is (i. e. the term) incapable of falling under the term rikthā, as also it is indivisible property.

Putro, a son, also when the parental estate has not gone to another, ananyās'ritadravyaḥ, should be made to pay the debt. That which has gone to another is 'wealth gone to another,' anyās'ritam. He whose wealth, belonging to his father or mother, has gone to another is one whose wealth has gone to another, anyās'ritadravyaḥ. He whose wealth has not gone to another is an ananyās'ritadravyaḥ; Putrahinasya, of a sonless man, rikthinah, those who take the heritage, should be made to pay the debts. This is the construction.

When these co-exist, the order (of priority) is the same as is stated in the text i. e. he who takes the

\* Page 34

heritage should be made to pay the debts; in his absence he who takes the wife; and in

his absence the son.

51. See *Munshi Karim Uddin vs. Kumar Govind Krishna* 31 All. 497 (P.O.) The liability is personal—The debts are not a charge upon the estate. *Laxman vs. Saraswatibai* 12 Bom. II. O. R. 98.

As regards co-owners taking by survivorship, see *Deen Dayal vs. Jagdip Naran* 4 I. A. 247. *Udaram vs. Ramu* 11 Bom. II. O. R. 76.

A widow taking assets is liable. *Jayanti Subbaia vs. Alamelu Manjamma* 27 Mad. 45. But not, if the debt was improper. *Kissendas vs. Rangubai* 9 Bom. L. R. 382.

It may be said that if these the co-existence itself is not possible; because according to the text<sup>1</sup> "Not brothers, nor the paternal ascendants, (but) the sons are [entitled to take the heritage of the father," when a son exists, it being impossible for any other to take the inheritance. It is also not possible to find one 'who takes a wife'—on account of the text<sup>2</sup> "Nor is a second husband ever recommended for virtuous women." Further, it is also improper to say, that the son should be made to pay the debt, as it has been (already) said that 'the debt should be paid by sons and grandsons'. The qualifying expression 'when the parental estate has gone to another' is also meaningless, as it is impossible for the property to go to another when the son exists; and even if it were possible, that import is already expressed by the clause "He who takes the heritage &c." Lastly, it should also not be said that '(The debts) of a sonless man (should be paid by) those who take the assets," because it has been established that he who takes the assets should be made to pay the debts even if the son exists. It follows therefore that much more is one who takes the assets liable to pay the debts when there is no son."

To this the answer is as follows: It is possible that another may take the heritage (even) when the son exists, as there is no (right of) succession to inheritance for the impotent, the blind, the deaf and the like others even though they occupy the position of sons. Moreover,

The Answer. the Author will say further on,<sup>4</sup> after commencing (in order) with the impotent and others, that "these should only be maintained without a share." As Gautama<sup>5</sup> has said: "According to some, the son of a woman of equal caste even does not inherit, if he be living unrighteously." Hence also, when the sons are impotent or otherwise (incompetent), and the son of a woman of equal caste leads an unrighteous life, the uncle, his son and (like) others take the heritage.

1. Cf. Manu. IX. 185.

2. Cf. Manu. Ch. V. 161.

3. Here ends the five-fold objection.

4. II. Verse 140.

5. Ch. XXVIII. 40.

- Although it is not possible for one to take the wife of another as the *S'āstras*<sup>1</sup> are opposed, still one who transgresses the prohibition certainly becomes liable to discharge the debts incurred by the former husband. A man is called a *Yeshidgrāhi*<sup>2</sup> when he takes the last of the four kinds of *Sucairiṇi* (wanton) women or the first of the three kinds of *Punarbhū* (re-married) women: As says Nārada<sup>3</sup> "(Besides the lawful wives) seven other sorts of wives are mentioned in order, who had<sup>4</sup> previously belonged to another. Among these the *Punarbhū* (re-married) is of three kinds, and the *Sucairiṇi* (wanton woman) is fourfold (45). "A maiden owned by another not deflowered, but bearing the taint of the acceptance<sup>5</sup> (only) of the hand (by the bridegroom) is termed the first *Punarbhū* on account of the performance of the ceremony of marriage a second time<sup>6</sup> (46). When a woman has committed a crime and she is given in marriage to another by the elders, taking into consideration the usages of the country, is termed the *Second Punarbhū*" (52). Who has 'committed a crime' means who has 'committed adultery'. "When a woman in the absence of the brothers-in-law, is given (in marriage) by her relations to a *sapinda*, who is of the same caste, she is termed the third *Punarbhū* (48). When a woman, no matter whether she has borne children or not, goes to live with another man through lust, even while her husband is living—she is the first *Swairiṇi* (49). One who, after

1. Or, as it would be opposed to the *Śāstras*. But it should be noticed that a custom exists e. g. among the Ahirs of the United Provinces to take on to himself the wife of a debtor dying without redeeming the debt. And an instance was noticed very recently in Central India where the brother redeemed the wife of his deceased brother taken on by an unpaid creditor.

2. One who takes the wife of another.

3. Ch. XII. 45-53.

4. Dr. Tolly translates as, "Who have previously been enjoyed by another man".

5. *Pāṇigrahana* (पानिग्रहण) is the acceptance of the hand of the bride by the bridegroom.

6. In Dr. Jelly's edition of the Nārada Smṛti, this *verso* has been placed as descriptive of the last of the *sucairiṇi* women, exchanging it with *verso* 47 which is given there as descriptive of the second *Punarbhū*. While both Vijñāneśvara and Mitra-misra here as also in his Digest (see page 347) give this as descriptive of the second *Punarbhū*. In the Smṛticandrikā also Devapabhatta cites this as from Nārada as characteristic of the second *Punarbhū*. (see p. 173 l. 5)

having left the husband of her youth and betaken herself to another man, returns into the house of her husband is known as the second *Swairinī* (47). When after the death of her husband, and leaving aside her brothers-in-law and other near relations a woman unites herself with a stranger through love, she is called the third *Swairinī* (50). 5  
One who having come from a foreign country, or having been purchased with money, or being oppressed with hunger or thirst, gives herself up to a man, saying,—‘I am thine,’—is declared to be the fourth (*Swairinī*). “The debts contracted by the husbands of the last of the *Swairinīs* and of the first of the *Punarbhū*s must be 10 paid by him who lives with them.”<sup>1</sup>

The same author has mentioned even other persons (than these) who take the wife of another who are liable for the discharge of debts: “If however, a woman who has considerable property or has a child and repairs to another man with these, that man must pay 15 the debt contracted by her husband, or he must abandon her.”<sup>2</sup> One having considerable property is a *Sapradhānā* i. e. possessing enormous wealth. So also “He who has intercourse with the wife of a dead man who has neither wealth nor a son, shall have to pay the debt of her husband, because she herself is considered as 20 his property.”<sup>3</sup>

Moreover, the repetition of the word *putra* is only indicative of order. By the expression *ananyāś'ritadravyaḥ* it is indicated that even when there is no heritage, of the many sons, he alone is competent to discharge the debts who is competent to take a share and 25 not the incompetent, such as the blind and like others. The expression “Of a sonless man, those who take the heritage” is also indicative of one who has no ‘son or grandson.’ i. e. if the great-grandsons etc. take the heritage then they should be made to pay the debts, and not otherwise; this is the meaning. 30

It has already been said that sons and grandsons should be made to pay (the debts) even when they do not

\* Page 35. take the heritage. As says Nārada: “If a debt which has been inherited in an uninterrupted

1. Nārada I. 24.

2. Nārada I. 21.

3. Nārada I. 22

4. Ch. I. 4.

line of descent has not been paid by the sons, such a debt of the grandfather must be discharged by his grandsons. The liability ceases after the fourth (person) in descent." Thus everything<sup>1</sup> is faultless.

Or, it has been said "that failing him who takes the wife,  
5 the son should be made to pay."

It has been laid down that failing the son, one who takes the wife should be made to pay. By the *rikthi* in the expression *putrahinasya rikthinah* the wife alone is indicated. Because the text<sup>2</sup> is "She herself is considered as his property;" as also—"He who  
10 takes a man's wife, takes his wealth."

It may be said, the two expressions viz. "In the absence of him who takes the wife, the son should be made  
An objection. to pay the debt", and "In the absence of a son, he who takes the wife (should be made to pay)"—

15 are mutually contradictory. When both exist, no one should be made to pay. (To this the answer is): There is no fault here. In the absence of those who take the last *Svairini*, the first *Punarbhū*, or a wife having considerable wealth, the son should be made to pay. And in the

20 absence of a son, he who takes a wife having no property or child should be made to pay. This very thing has been said by Nārada<sup>3</sup>: "Of the three viz. he who takes the wealth, as well as he who takes the wife, and (lastly) the son, he is liable for the debts who takes the wealth. The son is liable in the absence of him who takes the wife  
25 or of him who takes the wealth; and he who takes the wife (is liable) in the absence of him who takes the wealth or of the son." When all the three viz. he who takes the wealth, or he who takes the wife, and (lastly) the son, exist together, he who takes the estate becomes liable for the debt. The son, in the absence of him who takes the wife  
30 or him who takes the wealth. (The words) *Stri* and *dhana* make up (the compound word) *Strīdhana*. Those who possess these (two) are (indicated by the compound word) *Strīdhaninau*. In the absence of these two i. e. the *Strīdhaninau*, the son alone becomes liable for the

1. This has a reference to the five points of objection stated above.

2. Nārada. I. 22.

3. Oh. I, 23.

dehts. In the absence of him who takes the wealth, or of the son, he who takes the wife is alone liable for the debts. In the absence of him who takes the wife, the son is liable for the debts, and in the absence of the son he who takes the wife. Thus is removed, as before, the apparent contradiction.

5

Of the clause "Of a sonless man, those who take the heritage" (should be made to pay the debts)" there is another explanation: When it is asked to whom these persons who take the wealth, or the wife, as also the son, should be made to pay, the answer is that they should be made to pay the creditor, in his absence his son &c.; and when in the absence of his son &c. it is asked to whom should these be made to pay, this clause would have an application.

10

The expression "Of a sonless man, those who take the heritage" means this: He who is the *rikthī* i.e. a *sapiṇḍa*, or another who is entitled to take the inheritance of a creditor who has no son or other issue, should be made to pay to him—the *rikthī* (the debtor). For Nārada<sup>1</sup> has said:—"Whatever debt is due to a (deceased) Brāhmaṇa creditor who leaves issue is payable to the issue. If there be no issue it should be paid to his *sakulyas*, and on failure of these, to his own *bandhus* or kindred". When, however, there are neither *sakulyas*, nor relatives, nor the kindred, then it should be paid to the twice-born. On failure of these, it should be cast into the waters." (51.)

15

20

#### Viramitrodaya.

Intending to mention persons other than the sons and the like, liable to pay a debt, the Author proceeds

25

#### Yājñavalkya, Verse 51.

*Putrahinasya*, 'of one without a son', not oppressed with difficulties, possession of wealth, and competent; *rikthīnāḥ*, 'those who take the assets', of the debtor, by any means whatever is to be proceeded against in regard to his property which he has made his own, such a one if he is indifferent, should by a regular procedure be made to pay the wealth in the form of the debt. In his absence, one who takes over the wife of the debtor should be made to pay.

30





The use of the word *cāa*, 'also', is intended to include others not (here) specified who may (be made to) pay. Thus one not oppressed with difficulties, possessing wealth, and competent, such a son, or also a son not like him, who has taken the father's entire property, is liable for the payment of his debt, as he has taken the entire estate. Thus here, the conclusion is that, in the absence of the first and the last, a son not oppressed with difficulties, possessing wealth, and who is competent, in his absence one indifferent who takes the heritage, in his absence, one taking the wife of the sonless man with property, and in his absence, a son though not possessing the aforesaid qualifications.

The word *eva*, 'also' is to be used after the clause 'of one without a son'. From this, it has been pointed out that the debt of one who has a competent son, should not be paid by one who takes the assets or one who takes the wife.

So Bṛhaspati<sup>1</sup>: "The liability for the debts devolves on the successor to the estate, when the son is involved in a calamity; or on the taker of the wife, only in the absence of the taker of the estate". Kātyāyana<sup>2</sup> also: "A son should be compelled to pay the debt, if he is free from worry, and capable of having property, and competent; otherwise a son should not be made to pay (557). Where a son is found to be overpowered with difficulties, or is a minor, the taker of the assets should be made to pay it, and in his absence, the taker of the wife (576)".

This rule of adjustment is in regard both to difficulty and equity, and is also approved of the Miśra; and therefore any opinion in other digests contradictory of this should not be admitted.

As regards the clause, 'of one sonless, those who take the heritage', the Mitākṣharā<sup>3</sup> explains that by this it is stated that in the place of a sonless creditor, those of the *Sapinda*s who take the assets should be caused to be paid by the debtor.

In the case of a taker of the wife, Kātyāyana<sup>4</sup> explains: "What was contracted by the moneyless and sonless viatner and the like, that man who enjoys his wives must pay his debt" (577). By the word *adi*, 'and the like', are to be included those who depend for their livelihood upon their wives. Similarly<sup>5</sup>: "Those who have gone on a long journey,

1. Ob. XI. 52.

2. Verses 557, 576.

3. p. 301. l. 5-10.

4. Verse 567.

5. Verse 576.

who have been cast off, and who bear the marks of dullness in intellect or insanity, of these even though living, the debt should be paid by those who have resorted to their wives or assets (578)."

Nārada<sup>1</sup>: "One who is a maiden yet, not deflowered, but hearing the tint of the acceptance (only) of the hand (by the bridegroom) is termed the First Punarbhū on account of the performance of the ceremony of marriage a second time (46). Taking into consideration the usage of the country, when a woman is given in marriage to another by the elders, when she has been guilty of a crime<sup>2</sup>, such a case is termed the Second (Punarbhū<sup>3</sup>) (52). In the absence of the brothers-in-law, when a woman is given in marriage by the *śandhavad*s or kinsmen, to a man of the same *varṇa* and of the same *piṇḍa*<sup>4</sup>, she is termed the Third (Punarbhū) (48). When a married woman, either when she has borne children, or has not had children, resorts to another man through lust, while yet her husband is living, she is called the First Swairiṇī (40). One who, after having left the husband of her youth and betaken herself to another man, returns to the house of her husband is known as the Second Swairiṇī (47). When after the death of her husband, leaving aside her brother-in-law and other relations, a woman unites herself with a stranger through love, she is called the Third Swairiṇī (50). One who having come from a foreign country, or having been purchased with money, or being oppressed with hunger or thirst, gives herself up to a man saying—'I am thine',—is declared to be the Fourth Swairiṇī (57). In regard to the one who is the last of the *Swairiṇis*, and the one who is the first of the *Punarbhū*s—the debts contracted by the husbands of these, must be paid by the man to whom they resort (I. 24)". (51).

### S'ūlapāṇi.

#### Yājñavalkya, Verse 51.

*Rkthagrāhaḥ*, 'Who takes the heritage,' such as the uncle &c., on account of his relationship, one who has taken the assets; such a one *ṛṇam dāpyaḥ*, 'should be made to pay the debt'. So also the taker of the wife even. The son capable of taking property and devoid of any estate;

1. Oh. XII. 46-52; and Oh. I. 24.

2. i. e. adultery.

3. see note 6 on p. 798 above.

4. *सर्वज्ञसर्वज्ञ* is the reading in Jolly. *Mitākṣharā*, and in both the works of Mītra. *सर्वज्ञसर्वज्ञ* would be a better reading.

who has not received the father's property; not one who has taken the father's property, such a one being included in his capacity of having taken the assets. Of one without a son, those who are competent to take the heritage, such as the uncle &c.

- 5 Of the taker of the heritage, or of the wife, or the son, when and by whom should be paid? So Nārada<sup>1</sup>: "Of the three viz.: he who takes the wealth, as well as he who takes the wife, and (lastly) the son, he is liable for the debts who takes the wealth; the son is liable in the absence of him who takes the wife, or of him who takes the wealth; 10 and he who takes the wife (is liable) in the absence of him who takes the wealth, or the son." In the absence of the taker of the wife or of the heritage even by a son who is not competent may be paid; when the taker of the wife or of the heritage are available, only by a son who is competent. On this rule of adjustment Kātyāyana<sup>2</sup> says: "A son should be compelled 15 to pay the debt, if he is free from worry; is capable of having property and is competent; otherwise, the son should not be made to pay (557). Where the son is oppressed with difficulties, or is seen to be a minor; in such a case, the taker of the property should be compelled to pay, and in his absence, the wife-taker (576)." (51).

- 20 While mentioning the prohibitions regarding the recovery of debts from particular individuals, the Author mentions other prohibitions.

### Yājñavalkya, Verse 52.

- 25 Among brothers, between the husband and the wife, and between the father and the son, the relation of suretyship, lending, or being witnesses has not been allowed while they are undivided.

Mitākṣharā :—The relation of a surety is *suretyship*, *prātibhāvyam*. Of the brothers, of the husband

- 30 The relation of suretyship, lending and being witnesses prohibited when (the family) undivided. and wife, and the father and son *while the estate is undivided*, *avibhakte dravye*, i. e. before the partition of the estate, the relation of suretyship, lending, or being a witness *has not been allowed*, *na smṛtam*, by Manu and others. 35 Nay, it has even been prohibited as there is (still) the community of wealth. As it is quite possible

that suretyship and being a witness might lead in the end to loss of money, and also as a debt requires necessarily to be repaid.

This rule (of prohibition), however, applies when there is no mutual consent. For, by mutual consent, the relationship of suretyship &c. may indeed take place even though (the members be) undivided. After partition, it takes place even though there is no mutual consent. 5

It may be said, the prohibition against the relation of suretyship &c. between the couple before partition is not proper. As there is no (possibility of a) partition between them, the qualification<sup>1</sup> would be meaningless. And the negation of a partition has been laid down by Apastamba<sup>2</sup> (thus) :—"No division takes place between husband and wife."

(To this the answer is), True ; but the absence of a division has a reference only to the rites which can be performed by means of the *S'rauta*<sup>3</sup> and the *Smārta*<sup>3</sup> fires and to the rewards proceeding from these (rites), and not moreover to all kinds of acts and property. For, after stating that no (division) takes place between the husband and the wife', and anticipating the question 'Why does it not take place?' the (same) author has thus laid down 15

Page 36. the reason (for this rule): "For, from the time of marriage, they are united in religious ceremonies, likewise also as regards the rewards for works by which spiritual merit is acquired" *For i. e.* since their union has been laid down in religious ceremonies beginning with the acceptance of the hand (of the bride by the bridegroom), vide the text: "The husband and wife should consecrate the (sacred) fire." Therefore since the two have a joint right in the consecration of the fire, they 20 25 30

1. viz. 'before partition'.

2. 2-6-14-16.

3. A *S'rauta* (श्रौत) karma is that which is prescribed by the *Śruti* or *Veda*. A *Smārta* (स्मृत) karma is that which is laid down in the *Smṛtis*, e. g. in the several *Gṛhya* works of each *Śākhā* of the several *Vedas*.

4. Apastamba 2-6-14-(17-18).

have also a (similar) and joint right in regard to the rites which are to be performed by means of the sacred fire prepared by means of the consecration. Moreover, from the text<sup>1</sup>: ( "Let the householder perform) the *Smārta* ceremonies on the nuptial fire &c.", the  
 5 two have a joint right even in (the performance of) the rites to be performed by means of the nuptial fire. Therefore in ceremonies which are independent of either of the two fires such as the *pūrta*<sup>2</sup> rites, the husband and the wife have each a right independently of one another. Moreover, the (perpetual) union of  
 10 the husband and wife has been laid down in reference to (the attainment of) heaven &c. (which are) the rewards for meritorious deeds. Vide the *S'ruti* text<sup>3</sup>: "May you (two) start an imperishable body in the heaven" &c. Thus it should be understood that the union of the two exists in reference to those acts (only) for which  
 15 they have a joint right, and not, moreover, in the rewards also of those performed with the husband's permission such as *pūrta*.

It may be said that the jointness (of husband and wife) has been laid down even, in connection with the ownership over wealth vide the text<sup>4</sup>:—"And with respect to the acquisition of property.  
 20 For they declare that it is not theft if a wife expends money on occasions (of necessity) during her husband's absence."

(To this the answer is), True; but this text has indicated the ownership of the wife over wealth, and not an absence of a division &c. Since after stating "With respect to the acquisition of  
 25 property" the Author<sup>5</sup> has mentioned the reason of the rule (stated) there. Thus, it means, that since *Manu* and others do not declare it to be theft in cases where in the husband's absence, the wife spends on special and necessary duties such as offering a meal or

1. Yājñ. I. 97.

2. *Pūrta*-ग्ँ—as opposed to and contradistinguished from इष्ट. See further on Mitākṣharā Sk. p. 81. l. 1-2. An इष्ट *Karma* has been thus defined:—अग्निहोत्रं तपः सत्यं वेदानां येष पाठनम् । अग्निहोत्रं वेदेष्वपि इष्टमित्यभिधीयते ॥ While a पुर्त *Karma* has been thus defined:—वागीश्वरकर्मणि देवतायनयानि च । अन्नप्रदानमात्रम् पुर्तमित्यभिधीयते ॥

3. Taittirīya Brāhmana III. 7-5.

4. Āpastamba 2. 6. 14. (19. 20.)

5. i. e. Āpastamba.

alms to a guest, therefore the right of ownership over property exists in favour of the wife also. Otherwise it (*i. e.* her act) would be theft. Therefore a wife also may have a share at the option of the husband and not of her own will. As the Author (himself) says, further on<sup>1</sup>: "If he make the allotments equal, his wives should be given equal shares." 5

### Viramītrodaya.

In the chapter on payment of debts, in the portion stated with the text 'Debt which may be paid, and which may not be paid &c.', while stating to whom it may not be paid, in that connection, the Author states other prohibitions also in that place 10

### Yājñavalkya Verse 52.

In the word *avibhākta*, 'undivided', the past participle (*kta*) is used in the abstract<sup>2</sup> sense. Therefore, when there has been no separation, *dhātṛṇām*, 'between brothers' mutually, *dampatyoh*, 'between a couple' *i. e.* a husband and wife, as also between a father and son, *pratibhādayam*, 'the relation of suretyship', *i. e.* bail, *ṛṇam*, 'lending' *i. e.* giving of a loan, *śakṣīyam*, 'being witnesses,' (position of a witness), for establishing a point in dispute, *na smṛtam*, 'has not been allowed' *i. e.* is not approved of the *Smṛti*. 15 20

The word *atha*, 'or', is indicative of the inclusion of the paternal uncle, brother's son, and like others. The word *cha*, 'and' indicates the inclusion of re-united relations. The word *tu*, 'however', indicates the non-application of this rule in the case of consent or in regard to extraordinary things. Thus when the other party is agreeable for a suretyship or to the testimony, then the son &c. can become a surety, as also a witness for the father and the like. In the case of *Saudhāyika* articles, even when not separated, mutual transactions may take place. 25

After partition, however, the relation of suretyship may certainly exist, it has been expressly stated—'when unseparated', and also there could be no objection. In the case of suretyship and being witnesses other particulars will hereafter be mentioned (52). 30

1. *i. e.* Yājñ. II, 116.

2. *वर्गे क्तः* *i. e.* in a state or condition of separation.

3. *उ दय*—affectionate gifts received individually. These do not become part of the family property, but are owned by the donee as of their personal right.

## S'ûlapāni

Yājñavalkya, Verse 52.

The meaning is plain. Nārada:<sup>1</sup> “(The acts of) giving evidence, of becoming a surety, of giving and of taking, may be mutually performed by divided brothers, but not by unseparated ones.” (52).

## THE LAW OF SURETYSHIP

Now the Author proceeds to consider the law of suretyship

Yājñavalkya, Verse 53.

For appearance, assurance, and for payment is suretyship ordained. The first two, however, should be made to pay in case of default, while in the case of the last, the sons even (should be made to pay).

Mitâksharâ :—Prātibhāvyam, *suretyship*, is a ‘contract with another person with the object of creating confidence.’ That, moreover is divided threefold according to the difference in the subject-matter; e. g. darsāne, *for appearance*, viz. with the words “whenever his appearance is necessary, I shall produce him”; pratyaye, *by way of assurance*, e. g. confidence i. e. “upon my assurance I lend him money, he will not deceive you. Since he is the son of such and such a person, or he possesses a very fertile land, or possesses an excellent village”; dāne, *for payment*, e. g. “If he does not pay, then I myself will pay.” Thus is suretyship ordained. (this) clause is to be taken along with each.

Ādyaṁ tu, *the first two however*, i. e. the sureties for appearance and of assurance; vitathe, *in case of default*, i. e. if things turn out otherwise, that is to say in case of non-appearance or a breach of the assurance; dāpyau, *should be made to pay*, i. e. the amount at

issue, to the creditor by the king; *itarasya*, in the case of the last, i. e. of the surety for payment, even the sons should be made to pay<sup>1</sup>.

By *default*, *vitatthe*, is meant when the debtor evades payment either fraudulently or by (pleading) poverty. By saying 'in the case of the last even the sons', it has been (impliedly) said that the sons of the first two should not be made to pay. By mentioning 'the sons' it has been indicated that *grandeone* should not be made to pay.

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S'ūlapāni.

Yājñavalkya, Verse 53

Suretyship has been ordained in regard to three *viz.* appearance etc., *Ādya* 'the first two', i. e. the sureties of appearance and of assurance, on a non-observance of the condition should be compelled to pay. In the case of the surety for payment, the sons also must be made to pay. So *Bṛhaspati*: "For appearance, for assurance, for payment, and also for delivering the assets of the debtor: it is for these four different purposes that sureties have been ordained by sages in the system (of law) (39): Ono says, 'I will produce (him)'; another says, 'He is a respectable man'; the third says 'I will pay the debt', and the fourth says 'I will deliver his goods' (40). The first two, on a failure of the promise, shall be made to pay immediately the amount; while the two last, on a breach of the engagement (by the debtor); and in their absence, their sons also." (41). [53].

With a view to make this very thing clear, the Author says

Yājñavalkya, Verse 54.

Where a surety for appearance dies, or also a surety by assurance, the sons of such a one must not pay the debt; (but they should pay) in the case of a surety for payment.

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1. In the case of a surety for payment, the sons are liable. *Thangathāmal vs. Arunachalam* 41 Mad. 1071. and this liability is independent whether any consideration was received by the father. *Dwarkan Das vs. Krishna Das* 55 All. 675.

2. Oh. XI. 39-41.



Mītākṣharā:—When darsānapratibhūh, a surety for appearance, prātyayiko wā, or a surety by

Sons of a surety assurance, mṛtaḥ, dies, i. e. goes to heaven, then for appearance need the sons of these two must not pay the paternal not pay the debt. debt which has been incurred as a surety.

Where, however, dānāya sthitaḥ, a man standing surety for payment, dies (pratibhūh), tatputrā dadyuḥ, his sons should pay, (and) not the grandsons. And these too should pay the principal amount only, not the interest; Vide the text of Vyāsa viz.: "A grandson should pay the debt of the grandfather, as also a son that which is incurred as a surety, equal (in amount) to the principal only; their sons, moreover should not pay. This is (the) fixed (rule)."

A grandson should pay his grandfather's debt excepting that which was incurred under a suretyship,

\* Page 37. equal in amount, i. e. as much as was taken, and not the interest. Similarly the son also

(i. e. of the debtor) should pay his father's debt incurred as a surety equal only to the principal amount. The sons of these, i. e. of the son and the grandson, i. e. the grandson and the great-grandson, should not be made to pay a surety-debt or even a debt which is not a surety-debt respectively when they have received no property.

As for the text: "If the debtor is moneyless, and the surety possesses wealth, he shall be liable to pay the principal; he should not pay interest," that too should be explained as follows:—*Lagnakaḥ* is the surety, *Kṛdakaḥ*, is the debtor. If a *lagnaka* dies possessed of wealth, then only the principal amount should be paid by his son, not the interest.

Where a surety for appearance or a surety by assurance has stood surety after obtaining a sufficient pledge, there even his sons should pay the surety debt out of that very pledge. As says Kātyāyana: "Where a man stands surety for appearance after

obtaining a sufficient pledge from the debtor, his son shall be compelled to pay the debt from it in the<sup>1</sup> absence of his father." The use of the word *assurance* indicates by implication (also)<sup>2</sup> appearance. In the absence of the father i. e. when the father is dead or has gone to a distant region.

5

## S'ūlapāṇi.

Yājñavalkya, Verse 54.

This verse is for the purpose of ordaining payment by the sons of the surety for payment only; and thus there is no repetition, so Kātyāyana': "A surety obligation is never to be paid by the grandsons; by the son even an equal amount is to be paid, in all cases of a paternal debt". (54).

Where there are more sureties than one, (a question would arise) how should the debt be paid? So the Author says

Yājñavalkya, Verse 55.

15

When there are more sureties than one, they should pay an amount proportionate to their shares. But when they are bound jointly and severally, they may pay according to the choice of the Creditor.

Mitākṣharā:—If in one transaction, there are two or more sureties, then they should divide the debt and (each) should pay proportionately to the share (of each). Ekachhāyāsriteshu, when sureties are bound jointly and severally the (Chhāyā) image i. e. the resemblance of one i. e. of the debtor. (Those) whose liability is determined by it are known as sureties bound jointly and severally. As the debtor stands liable for paying the whole amount, so also are the sureties for payment bound jointly and severally to pay the entire amount.

In this way when there are sureties for appearance or by assurance, so also those who are bound severally they should pay

1. 'बिना विपुलान्' is another reading—which would mean 'even when the son has not received assets from the father.'

2. i. e. the mention of the surety for appearance includes the surety by assurance.

3. Verse, 561.

according to the choice, *yathākāmaṃ*, i. e. according to the wish of the *dhanikaḥ*, i. e. the creditor. And hence, whomsoever the creditor asks, having regard to his wealth &c., that one should pay the whole amount and not a portion.

5. Of those who are severally bound, if any one has gone abroad and his son is near, then he should be made to pay the whole according to the option of the creditor. When, however, he is dead, his son should be made to pay to the extent of his father's share without interest. As says *Kātyāyana*<sup>1</sup>: "Of sureties jointly and  
10 severally bound, any one who is available may be made to pay. In his absence abroad his son should be made to pay the whole. But if he be dead, his son should be made to pay equal to the share of the father."

### S'ūlapāni.

- 15 *Yājñavalkya, Verse 55.*

In regard to a debt, where the sureties are limited by portions, there in the absence of the debtor, they should pay the portion of each his own.

- When sureties are bound as responsible for the debtor singly, the creditor may, at his option, recover the entire debt from one surety  
20 alone (55).

Having stated the law relating to the payment of debts under a contract of suretyship, the Author states the law as to the recovery of the amount paid by the surety

### Yājñavalkya, Verse 56.

25. For a debt which a surety has been made to pay publicly to the creditor, double that amount becomes repayable to him by the debtors.

*Mitākṣharā*:—The amount which, yad, the surety *pratibhūḥ*, or his son being harassed by the

- 30 Debtors should creditor, is *publicly*, *prakāśam*, i. e. in the pay double to presence of all the people, *made to pay*, *dāpito*; the surety. to the creditor, *dhanino*; by the king, and not which he has made voluntarily by going to him out of a craving for a double amount. As says *Nārada*<sup>2</sup>: "What-

1. Verse, 538.

2. Ch. I. 121.

ever amount the surety shall pay when harassed by the creditor, the debtor shall pay double the amount to the surety"; *ṛnikaiḥ*, i. e. by the debtors; *tasya*, of him, i. e. of the surety; *dwiguṇam*, a double, *pratidātavyam*, becomes repayable. That, moreover, should be paid forthwith without waiting for any particular time, because that is the force of the text. This, moreover, has a reference to money (only). 5

It may be said that this text<sup>1</sup> regarding sureties lays down a rule as to the double (payment)<sup>2</sup> only. And this An objection rule is deducible even without prejudice to the one previously<sup>3</sup> laid down i. e. (about the increase) which indicates the (several) periods of time. Just as the rule<sup>4</sup> regarding the performance of the ritual for the birth (of a 10

1. i. e. Yājñ. II. 56.

2. And not that the double is payable at once.

3. i. e. Yājñ. II. 37-39.

4. The *Jāteṣṭhi Nyāya* (जतिष्टेय) is mentioned by Jaimini in Sūtras 38-39 of the third Pāda of the fourth *Adhyāya*. The discussion in this *Nyāya* turns upon the question whether the जतिष्टे (Jāteṣṭhi) should be performed before or after the जातकर्म (Jātakarma).—The द्रव्य maintains that it should be performed immediately after the birth of the child, but the सिद्धान्त says it should be after the जातकर्म, and the conclusion is to the same effect.

The relevancy of this discussion here will be seen thus: The जतिष्टेय lays down in substance the general rule of interpretation that where there are two rules and they refer to the same subject-matter, they should be so interpreted and applied as to avoid as far as possible the fault of incongruity (see for a fuller discussion the सुषोपनिषद् Text p. 32 & Trants. pp. 76-80 and वल्लभजी on verso 56). In the present case the application of the व्याय is invoked in this way by the द्रव्य (objector). Yājñavalkya in verse 37 lays down the rule about the periods of time when interest is allowed to accumulate. In the present verso (i. e. 56) the rule laid down is that a surety who is compelled to pay is entitled to a double. Therefore the suggestion in the द्रव्य is that the rule in verse 56 should be taken as subject to or without prejudice (अव्याय) to that in verses 38 and 39, so that the double that the surety is entitled is not payable at once but subject to the conditions laid down in verses 38 and 39. This position has been refuted by the सिद्धान्त and the conclusion arrived at is that the double that is due payable to the surety under this verse is payable at once (मय एव द्विगुणं दातव्यम्). Note the following extract from the *Subodhini*. महते तेष्वपुत्रयोगः । यथा मुद्रकालस्य अवाधित्वेन जतिष्टेयवान्, तथा 'अज्ञानिभ्यो वृद्धिः स्यात्' इत्यादिना दुराक्तो यः कादम्बेन वृद्धिः तदवधिनिष्ठ द्वेगुणविधानम् । अतएव न सद्यो द्वेगुणमेवेति । and there he states conclusion अतएव द्रव्यमार्गं यस्याद्यो द्वेगुणं तदेवावश्यं विधेयम् । (P. 32 a l. 15. Eng. Trs. p. 78 l. 28 and p. L 15.

child) is (understood as being) laid down (to be) without prejudice to the rule about (the period of) impurity. Moreover, if it (*i. e.* the rule) is understood as laying down an immediate increased payment, it being impossible for an immediate (increase)

5 \* PAGE 38. *i. e.* a calf in the case of the female of a beast, it carries us to the payment of the original principal alone.

(To this the answer is) This is wrong. The present text would be meaningless if it is understood as

10 The answer laying down a rule as to the doubling only (of the principal), since the rule as to the doubling (for the principal) by regard to the periods of time has already been established by the text: "Of cloth, grain and gold the utmost increase is fourfold, threefold, and twofold." As for the  
15 female of a beast, even under the rule of increase by lapse of time, if there is no progeny, the beast alone is to be returned. Moreover, even when some time after the payment of the amount the surety comes to an agreement with the debtor, it is possible to have the progeny then, or he may return the female beast along with the  
20 progeny already born before. So there is no force in this objection.

Again, a surety-debt<sup>2</sup> is a debt, which is incurred voluntarily, and the payment made by the surety is therefore necessarily a voluntary payment. And there is no interest allowed for a voluntary payment before a demand. As has been said: "A friendly loan  
25 does not carry interest when no demand is made. If it remains unpaid on being demanded, it carries interest at five per cent." Therefore this text lays down that this debt which originates in a voluntary payment (by the surety) even though undemanded<sup>4</sup> would

1. Yājñ. II. 39 see above p. 769.

2. Here there is an attempt at a *pun* upon the word *प्रीतिदान*. The compound is to be solved as *प्रीते दत्तं*—given for the pleasure of the payee and not (*प्रीत्य*) of the payer. The fallacy is best exposed by taking the original word *प्रीतिदान* as it is. In Sanskrit it may mean "something given for pleasing another" or it may mean a friendly loan—as it is technically understood in the text cited from *Nārada*. The ground for the objection stated in the text, is supplied by the ambiguous middle *प्रीतिदान*.

3. By *Nārada* I. 109.

4. *i. e.* By the surety.

(at the most) increase in course of time as far as double, commencing from the day of the payment, is what is (intended to be) stated by this text.

This also is wrong. Such a conclusion cannot be drawn from this text. The only inference deducible is that a double should be repaid. Therefore, what has been said above is proper *viz.* that having regard to the force of the text the double should be repaid without regard to the rule as to the periods of time.

## Sūlapāṇi.

## Yājñavalkya, Verse 56.

Where the surety or his son has been compelled by the creditor to pay the amount, to him the debtors should pay double the amount.

By what time such double becomes payable, has been stated by Bṛhaspati: "When a surety pays on a demand (an amount) which has been vouched for, after the lapse of three fortnights, that amount (the debtor) is bound to pay" (56).

The Author mentions exceptions to the rule as to a double payment to the surety which has been laid down (above) as a general rule

## Yājñavalkya, Verse 57.

Progeny in the case of female beasts, three-fold in the case of corn, four-fold in the case of cloth, and eightfold in the case of liquids?

Mitākṣharā:—Like the double, in the case of gold, the female beasts &c. should be caused to be returned with interest as declared above without regard to (the rule as to) time. As for the verse itself, it has already been explained. The purport is that whichever limit has been laid down as the highest (increment) for each particular thing, with that increase it should be paid at once by the debtor to the surety who has paid (the principal), and without waiting for any particular period.

1. Ch. XI. 44.

2. i. e. are allowed to a surety who has paid the debt on account of the principal debtor.

3. i. e. of Yājñ. v. 57.

When, however, a surety for appearance is unable, at the appointed time, to produce the debtor, then a three fortnight's time should be allowed to him for finding out the debtor. Then if he produces him, he should be released<sup>1</sup>, otherwise he should be made to pay the amount in dispute. *Vide* the text of Kātyāyana<sup>2</sup>: "As for finding out an absconding debtor, time should be given to the extent of three fortnights as the farthest limit. If during that time the surety point him out, the surety should be absolved. If (however) the surety do not point him out after the lapse of the time (allowed), he should be made to pay the amount guaranteed. This is also the rule when he (*i. e.* the debtor) is dead."

The same writer<sup>3</sup> has also laid down the rule prohibiting particular persons from becoming sureties: "Not the master, nor an enemy, nor one holding a power from the master; nor one under restraint, nor a convict, nor even one (who is) of a doubtful character; nor also an heir, nor a friend, nor the resident student, nor one engaged on a commission from the king, nor also those persons who have entered the fourth<sup>4</sup> order, nor one who is not competent to pay (the amount to) the creditor and an equal amount to the king as a fine, nor one whose father is living, nor a wayward, nor one who is not (properly) known, should be accepted as a surety guaranteeing performance by himself". Sandigdhaḥ, one of a doubtful character, ANHIS'ASTAN, *i. e.* one upon whom hangs an accusation. Atyantavāsinah resident students, *i. e.* students leading a celibate life and specially known as Naiṣṭhika brahmachārīṇaḥ<sup>5</sup>.

Here ends the law as to sureties.

### Viramitrodaya.

In regard to a transaction with surety, the Author states special rules.

1. From his liability as a surety.

2. Verses, 532, 533.

3. See Bālabhāṣī.

4. Kātyāyana Verses, 114, 115, 116.

5. *i. e.* the last of the four stages of life according to the Aryan law *viz.* ब्रह्मचर्य, गृहस्थ, वानप्रस्थ and संन्यास. The life of a celibate, householder, hermit, and an ascetic.

6. See Yājñ. I. 50 and Mitākṣharā thereon pp. 792-794.

## Yājñavalkya, Verses 53, 54, 55, 56, 57.

*Dāne*, 'for payment, i. e. making payment himself, by recovering from the debtor and making over.

Moreover, Brhaspati makes this clear: "Now, one says 'I will produce (this man)'; another says, 'He is a respectable man'; the third says, 'I will pay the debt'; and yet another says, 'I shall deliver the goods.' (40). The first two however, on a failure (by the debtor in his engagement) should be made to pay the amount advanced at the time; the last two also, on a breach of the engagement (by the debtor), and in their absence, their sons also. (41)".

He who says, 'I shall produce before you the man proceeded against' he is one kind of surety. In this way is to be connected further on also. 'I shall pay', so says another; thus is it to be connected. In the expression *Ādyaū tu* 'the first two, however', by the use of the word *tu*, 'however', it has been indicated that of the first two kinds of sureties, sons must not be made liable to pay. 'On a failure', i. e., when there occurs a discrepancy in the matter of the appearance or the goodness vouched for, the sons also shall be compelled to pay. This construction follows from the consequent change in the case inflexion. By the use of the word *api*, 'also' are included the sureties for payment.

The author of the *Mitākṣharā* says that the Author further expounds what had already been stated before. As a matter of fact, however, the rule stated in the first verse relates to sureties when living; the word *itarasya*, 'of the other', meaning of the one gone abroad, and for a surety who is dead, the rule is stated in the second verse, and thus there is no repetition. This is the principle.

Those who stood sureties for payment, their sons should pay; this is the construction.

*Bahava iti*. If there are several sureties then they should pay upon a non-payment by the debtor, such portion of the amount of the debt as is proportionate to the fraction agreed to by each. Where a particular fraction has been fixed by an arrangement, there the adjustment is to be made under the rule: 'Equal shall be where no specification has been declared.' The word *bahavaḥ*, 'several' in indicative of more than one; therefore it should be noted that where there are two sureties, there also this arrangement holds.

1. Ob. XI.—10, 41.

2. i. e. Verse 53.

3. सर्वे अद्वुष्टिः is the full statement of the rule. Where no portion has been expressly specified, there the shares shall be equal.

See Jaimini X. III. 53-54. This is the 13th *Adhikaraṇa* which has been stated thus:—

स विभागः समो वे वा विभागश्च यः सः । वेदयं स्याद्यथा याममेव न तद्वदस्मत्सु यथा ॥ ३ ॥

This maxim is illustrated in the *Paribhāṣa* to the *Pāraskara Gṛhyas Sūtra*, where obligations to the several debtors are prescribed—As no number is specified, one for each equally is the inference.



*Dhānyamitt*, 'corn &c.', where, whichever is the highest interest, there that together with the amount of interest should be paid to the surety, is the collective sense. By the use of the word *eva*, 'only', is excluded the calculation of any more interest. By the use twice of the word *cha*, 'and also', are added five-fold in the case of corn only, and in the case of trifles (the rate of) increase is not stated here. (53-57). 5

### S'ūlapāṇi.

To this, the Author mentions an exception

Yājñavalkya, Verse 57.

A woman and a beast, make up (the compound) 'a woman and the beast'; debt in the form of these is 'women and beasts'. Where women slaves, or she-goats etc. have been recovered by the creditor from the surety, there, the surety should recover from the debtor, the women slaves, or the she-goats etc. together with the progeny also. Grain etc. as stated before. All other things at double. (57). 15

## THE LAW OF PLEDGES.

In a loan transaction of money, the guarantee to be offered to the creditor is two-fold viz. a surety and a pledge. As says Nārada<sup>1</sup>: 'The guarantee to be offered to the creditor is two-fold; (viz.) a surety and a pledge.' Of these (the law as to) surety has been dealt with. Now the pledge is being described. *Ādhi, p'edge*, is that which is deposited i. e. hypothecated 20

The law of by the debtor with the creditor for the sake of pledges. (creating) confidence for the amount borrowed, (that) is an *Ādhi*. That moreover, is two-fold: 25

*Kṛtakālah*, a pledge with a time-limit, and *Akṛtakālah*, a pledge with no time-limit. Each of these again is two-fold: A pledge for custody, and a pledge for use. As says Nārada<sup>2</sup>: "A pledge is that which is deposited and is known to be of two kinds; one for (the redemption of) which a time limit is fixed, and the (other) which is to be retained until payment". Again, it is said to be two-

1 Ch. I. 117.

2. I. 124 Dr. Jolly translates thus: "That to which a title is given (*adhikriyate*) is called a pledge."

- fold ; a pledge for mere custody, and a pledge for enjoyment. 'At the period fixed' *i. e.* at the time of the loan  
 Kinds of pledges. itself. *e. g.* (with the word) at such and such a time *e. g.* at the illumination festival—this pledge is  
 5 to be redeemed by me, otherwise it will become yours. At the time thus appointed (it is) to be taken away, *i. e.* to be taken near him—in other words—to be redeemed. *Deyam*, 'what is to be given', means (the act of) giving. 'Until payment.' *Yāraddeyam*, means without prejudice to the *Deyam*. *Udyataḥ*, means fixed  
 10 \* PAGE 39. *i. e.* appointed. *Yāraddeyodyataḥ*, 'fixed until payment' means the time for which is the interval for the repayment of the borrowed amount, *i. e.* for which the time has not been fixed. For safe custody *i. e.* for being preserved.

### Yājñavalkya, Verse 58

- 15 A pledge lapses if (it is) not redeemed by the time the principal amount is doubled ; that with a time limit, (lapses) by (the lapse of) the time ; a usufructuary pledge never lapses.

- Mitākṣharāḥ :—If, *yadī*, *i. e.* when, *dhane* the amount, lent  
 20 becomes double in course of time with the addition of interest as fixed by himself, *na mokṣhyate*, (the pledge) is not redeemed by the debtor by the payment of money, then it lapses.  
 & its four kinds described above. *i. e.* the property of the debtor becomes the lender's own. *Kālākṛtaḥ*, with a time-limit.

- 25 The word *kāla* has been placed first under the rule of grammar in *Ahitāgnyādīśhu*—"in (the compounds) *Ahitāgnyā* and the like, the words formed by the past passive participial terminations may be placed optionally at the beginning or end." That, moreover,  
 30 *naśyet*, will lapse ; *kāle*, when the appointed time is reached, whether before or after it is doubled. *phalabhogyāḥ*, usufructuary, is that where the profits are to be enjoyed. (*e. g.* field, garden &c. That, *na nasyati*, does not lapse, at any time. By the text ; "At

the time fixed, that with a time-limit lapse, the lapse of both kinds of pledges limited in time—viz. for safe custody and for enjoyment has been laid down. The absence of a lapse of a pledge without a time-limit has been stated in the text: "A usufructuary pledge does not perish." Therefore by 'the rule of the remainder' the text viz.: "A pledge would lapse &c." comes to be in reference to the pledge for safe custody, and not to one having a time-limit. 5

When a lapse occurs whether on account of the transgression of the rule of doubling or by the violation of the condition as to the time fixed (by the parties), a fourteen day's waiting time should be observed—vide the text of Bṛhaspati<sup>2</sup> viz.: "When gold is doubled or the stipulated period has elapsed, the creditor becomes the owner of the pledge after waiting for twice-seven days. During this period the debtor may redeem the pledge by paying the amount". 10

It may be said 'it is improper to say that a pledge shall lapse' in the absence of circumstances such as gift, sale &c. which (would) cause a cessation of the debtor's ownership, as also in the absence of circumstances which would create the creditor's ownership, such as acceptance, purchase &c., and also because there would be a disagreement with the text of Manu<sup>3</sup>: viz. "Nor, moreover, can there be a transfer or sale of a pledge on account of length of time." 15  
*Kālasamrodha*—'Accumulation on account of time'—(the pledge) standing over for a long time. On account of the *Kālasamrodha* i. e., the debt remaining over for a long time, there cannot be a transfer (na nisargosti) of a pledge, i. e. there cannot be hypothecation with another, nor also a sale (na cha vikrayah) Thus from the prohibition against hypothecation or sale (of a pledge) an absence of ownership of the creditor is deduced. (To this) the answer is: Even the act of pledging itself is considered as a circumstance, although coupled with a contingent condition, creating the creditor's ownership. The acceptance of a pledge also is well known in the world as a circumstance, also coupled with a contingency, creating the creditor's ownership. So when the amount becomes doubled, and also when the appointed time has arrived, the right of paying 20 25 30

1. i. e. the first half of verse 58.

2. Ch. XI. 27.

3. Ch. VIII. 143.

the amount becomes entirely extinct, and therefore under the present text<sup>1</sup> there occurs an entire cessation of the debtor's right of ownership, and the ownership of the creditor becomes absolute. Nor, moreover, is there a conflict<sup>1</sup> with the text of Manu<sup>2</sup>. For, the text: "Nor, moreover, can there be a transfer or sale of a pledge on account of length of time" has been stated after introducing a pledge for enjoyment thus: "Nor, however, can he get interest on the loan when the pledge is for use". And there being a prohibition against hypothecation or sale in the case of a pledge for use and enjoyment, the creditor cannot acquire ownership. Here also it has been said, viz.: "one for enjoyment of profits does not lapse."

In the case of a pledge for custody, however, Manu<sup>3</sup> has stated (the rule) separately: "A pledge (for custody only) must not be used by force; (and) one (so) using it shall forfeit the interest." Here also it will be said hereafter<sup>4</sup>: "There shall be no interest if a pledge for sale custody is used." The text: "A pledge when doubled lapses" has been stated with reference to a pledge for custody. Thus everything is without a contradiction.

### Viramītrodaya.

"Every month in the case of a pledge", so has been stated<sup>5</sup>; there in regard to pledges, the Author states special rules upto the end of the chapter

### Yājñavalkya, Verse 58.

There, a pledge is of four kinds, as differentiated by the several elements of character, kind, time-limit, and form. So also Brhaspati<sup>6</sup>: "A pledge is termed *bandha*, and is declared to be of four sorts; movable or immovable; to be kept only, or to be used; to be released at any time, or limited as to time; stated in writing, or stipulated (orally) before witnesses". By reason of its being indicated as to its four-fold nature by regard to its character, etc., such as the four kinds such as movable, immovable, etc., and those of four kinds. 'Stated in writing', i.e., having an evidentiary support stronger than witnesses. Other texts,

1. i. e. of Yājñavalkya.

2. VIII. 143 i. e. the one referred to above.

3. Ch. VIII. 144.

4. Verse 59 further on.

5. Verse 37 above see p. 763, l. 26.

6. Ch. XI. 17.

however, are to be interpreted as not to contradict this; this is in short the import.

If after the principal amount has become doubled it is not redeemed by the debtor, then the right of the debtor lapses. *Kālakṛtaḥ*, 'that with a time limit', i.e., one for which a period has been fixed, i.e. 'if by such and such a date the pledge is not redeemed by me then it becomes your property by right of ownership', thus with a time limit agreed upon. A pledge to be used or for custody only of this sort; *Kāle*, 'at the time', i.e., at the time fixed in that manner, upon the debtor not making the payment back of the debt, *naśyati*, 'shall lapse', i.e., will be removed out of the ownership of the debtor. This is the meaning according to the *Mitākṣharā* and others. 5 10

The revered Author of the *Ratnākara*, however, maintains that this text is to be differently interpreted: as in the case of transactions—such as regarding bronze, etc., where no agreement was made, there, without the consent of the debtor, dealing with the property as his own by the creditor is not seen generally. That interpretation is thus: where the debtor himself stipulates by a declaration thus, 'When the amount becomes doubled and I do not redeem the pledge, then this (pledged article) will indeed be yours', then after the amount has become doubled and no redemption has taken place, the right of the debtor becomes extinct. Here the reason is *Kālakṛtaḥ*, 'with a time-limit'—where a time has been fixed at which one's ownership will become extinct and the right of ownership of the creditor will spring up—such a pledge becomes lapsed by the time fixed. 15 20 25

A pledge with possession for the enjoyment of the fruit, however, where no time is fixed, does not lapse even by thousand years. 'When it becomes double, it has to be redeemed by me' with such an agreement finally made where a pledge was deposited by the owner, i.e., a pledge for custody, such a pledge, when the amount has become doubled and is not redeemed, lapses. Double is indicative of the highest limit of the increase. 30

A pledge for possession, however, although thus stipulated for, if it becomes doubled on account of depreciation or investment, does not lapse even if not redeemed. *Kālakṛtaḥ*, 'with a time limit' i.e., where a time limit has been made, such as, 'within such period if it is not redeemed, then it will be yours indeed', and the like stipulation, when not redeemed, the entire pledge lapses. Thus the clause 'when the amount is doubled' should be taken as stated. In the case of a conflict with the usage of the *S'isūda*, however, it should be taken as 35 40

indicative by implication of a particular period of time. Such an interpretation, moreover, appears to be better.

In regard to the expression *prasaṅget*, 'lapses', Brhaspati states a special rule: "When the time (for payment) has passed, and interest has ceased, the creditor shall become the owner of the pledge; but before ten days have elapsed, the debtor is entitled to redeem it". Vyāsa also, "When gold has become doubled on account of the completion of the time in the stipulated period, the creditor becomes the owner of the pledge; after waiting, however, for two weeks." Here the decision is to be reached according as the debtor is well placed or is not well-placed. (58)

### S'ūlapāṇi

#### Yājñavalkya, Verse 58.

After the amount has become doubled if the pledge is not redeemed by the debtor, then it lapses *e. g.* it becomes the property of the person advancing the amount. If a period of time has been stipulated by himself, then when that is reached, it lapses. Vyāsa states a special rule: "After gold has become doubled, by the completion of the interval under the stipulated period, the creditor becomes the owner of the pledge, after waiting, however, for three weeks; during this interval, the debtor may redeem the pledge by paying the amount". (58).

#### Yājñavalkya, Verse 59.

There shall be no interest if a pledge for custody be used, or one for use be damaged. If a pledge is spoiled or destroyed it shall be paid, unless it be by the act of God or the King.

Mitākṣharā:—Moreover, *gopyādheḥ, of a pledge for custody,*

*e. g.* a copper pan, there shall be no interest in case of any use (made thereof). Although the use be slight, even a large (amount of)

interest would be forfeited, as there is a breach of contract. So also, where the pledge is for possession and use, and the object of enjoyment, such as a hull or a copper pan, which is pledged with interest is damaged *i. e.* has been rendered unfit for (being dealt with in) any transaction, there is no interest. This is the context.

A pledge which has been *spoiled*, *nashṭa*, i. e., has undergone deterioration e. g. a copper pot &c. on account of a hole or on account of its being broken &c. should be made as (it was) before and returned. Here a pledge for custody, if damaged, should be returned after it is restored to its former condition. And if it is used also, even the interest shall be forfeited. 5

A pledge for use if *spoiled* should be made as (it was) before and (then) returned. If it carries interest, the interest should be given up. When it is destroyed i. e., has perished entirely, such a one also should be paid by paying the price. By paying it, he gets the amount with interest. When he does not pay then (even) the principal amount lapses. *Vide* the text of Nārada<sup>1</sup>:—"If it is destroyed, the principal lapses unless the loss is caused by fate or the king." Unless it be by fate (superior force) or the king; fate, *Daivam*, i. e., fire, water, and generally any misfortune &c. Unless it be without the loss caused by superior force and also by the king when it is without any fault on his part. In case where the destruction is caused by fate or the king, the original principal with interest or a fresh pledge should be given by the debtor. As is said: "When land is washed off by a stream, and also when it is taken away by the king, another pledge should be given, or the amount paid to the creditor." Here '*washed off by a stream*' is indicative of consequences of a *vis major*. 10 15 20

## Viramitrodaya.

Yājñavalkya, Verse 59.

25

*Gopyādheḥ*, 'of a pledge for custody', such as copper, silver &c. *upabhoge*, 'on being used', even though very small, *ṛddhiḥ*, 'interest', although large, no, 'does not' accrue, by reason of the transgression of the contract. Similarly, *sopakāre*, 'in the case of one for use' e. g., in the case of a cow &c., where the consideration takes the form of enjoyment and use, *tathā hāpīte*, 'is so damaged', i. e. has been rendered unfit for (being dealt with in) any transaction, for that pledge there would be no interest. 30

*Nashṭo*, 'spoiled', by being broken or otherwise, has become entirely unfit for (being used in) any transaction whatsoever, *cinashṭo*, 35

By saying "deterioration even though carefully kept", it has been indicated that the pledge should be carefully kept by the creditor.

### Viramitrodaya.

#### Yājñavalkya. Verse 60.

5 *Adheh*, 'of a pledge', *suikaraṇāt*, 'by the acceptance', such as of a pledge for custody by delivering it over, and of a pledge for use, by enjoyment, *siddhiḥ*, 'ie the establishment', and not merely by the writing and other means, vide the text of Nārada: "A pledge, 10 however, has been declared to be of two kinds, viz., (of) movables as well as (of) immovables. Both of these will be deemed to be established if there is possession, not otherwise."

By this, in the text: "In the case of a pledge, a gift, or a sale, etc., the prior alone has preponderance". Proof of possession is stronger, 15 and the conclusion that is deduced is that a prior one without possession, however, although prior is not stronger.

Such a pledge, however, *rakṣyamāṇopi*, 'even while carefully protected', if it suffers deterioration in course of time, then another pledge should be placed by the debtor, or the amount of the debt should be 20 paid to the creditor. The word *Api*, 'even', has the sense of opposition. In the case of the cow and the like, if it be lost, by a fatal accident, the principal becomes lost. Here also the usage of the cow alone is the authority. (61).

### S'ūlapāṇi.

#### Yājñavalkya, Verse 60.

25 *Adheh* 'of a pledge' *siddhiḥ*, 'the establishment,' is by the acceptance i. e. by possession and not by mere intention. So Vyāsa: "A pledge is said to be of two kinds viz: (of) movables as well as (of) immovables. Both of these shall be deemed to be established if there is 30 possession, not otherwise" (60).

The Author mentions an exception to the rule "A pledge lapses if doubled, &c."

1. Ch. I. 139.

2. Yājñ. II. 23. See above p. 718

3. The same verse is assigned to Nārada, where it is found at Ch. I. 139.

4. Yājñ. II. 58 (above).



## Yājñavalkya, Verse 61.

In the case of a debt contracted on a *Charitrā* pledge, the amount must be paid with interest, and in the case of a debt contracted on a chattel delivered as an earnest, he shall pay twofold.

**Mitākṣharā** :—Charitram, conduct i. e. good conduct.

Pledge by a *charitra* is a *Charitra* pledge.

Exception to Upon (the strength of) that whatever amount the rule that 'a has been borrowed and kept for self or given pledge lapses to another. This is the purport. Relying upon when the debt the good faith of the creditor where a thing, is doubled.' even though very valuable, has been made over by the debtor to the creditor, and only a small amount is borrowed, or, where, relying upon the good faith of the debtor, the creditor has advanced a large amount to the debtor even after taking a pledge of a small value, that amount the king should cause to be paid with interest. The purport is this. A pledge of this sort does not lapse even though the amount is doubled, on the other hand the amount only should be paid (to the extent of the) double.

Similarly, *satyankārakṛtam*. *Kāra* (an act) is the same thing as *Karana* (making). The affix *Ghañ* (घञ्) is used here to denote action. (भाष्य *Bhāṣya*). The making of truth is *Satyankārah*. The augment *मुम्* (*mum*) is used under the rule of grammar (6-3. 70) "मुम् is the augment of सत्य and अवद् when the word कर् follows." That which is made by means of a *Satyankāra* is a *Satyankārakṛta*. This is the meaning intended. When even at the time of offering the pledge itself it was agreed thus *viz* "even when the debt is doubled, I am to pay the double amount only, and the pledge is not to lapse" then the double should be caused to be paid.

\*Page 41.

Another meaning (is this) Where *Charitra* itself is the pledge it is called a *charitra-bandhaka*. By the word *Charitra*

1. i. e. the कर् which is the expression of action, is used in the abstract sense. कर् is the same as कर्ण.

By saying "deterioration even though carefully kept" it has been indicated that the pledge should be carefully kept by the creditor.

### Viramītrodaya.

#### Yājñavalkya, Versa 60.

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Exception to Upon (the strength of) that whatever amount the role that 'a has been borrowed and kept for self or given pledge lapses to another. This is the purport. Relying upon when the debt the good faith of the creditor where a thing, is doubled.' even though very valuable, has been made over by the debtor to the creditor, and only a small amount is borrowed, or, where, relying upon the good faith of the debtor, the creditor has advanced a large amount to the debtor even after taking a pledge of a small value, that amount the king should cause to be paid with interest. The purport is this. A pledge of this sort does not lapse even though the amount is doubled, on the other hand the amount only should be paid (to the extent of the) double.

Similarly, *satyankāraḥ*. *Kāra* (an act) is the same thing as *Kāraṇa* (making)<sup>1</sup>. The affix *Ghañ* (घञ्) is used here to denote action. (मात्र *Bhāra*) The making of truth is *Satyankāraḥ*. The augment *मुन्* (*mūn*) is used under the rule of grammar (6-3. 70) "मुन् is the augment of सत्य and अवद् when the word कर् follows" That which is made by means of a *Satyankāra* is a *Satyankāraḥ*. This is the meaning intended. When even at the time of offering the pledge itself it was agreed thus viz "even when the debt is doubled, I am to pay the double amount only, and the pledge is not to lapse" then the double should be caused to be paid.

\*Page 41.

Another meaning (is this) Where *Charitra* itself is the pledge it is called a *choritra bandhaka*. By the word *Charitra*

1. i. e. the कर् which is the expression of action, is used in the abstract sense. कर् is the same as कर्तव्य.

is expressed that unseen<sup>1</sup> virtue known as *apūrva*, which is born of a bath in the Ganges or of (the performance of) the *Agnihotra*<sup>2</sup>.

Where that (i. e. the *Charitra*) itself is pledged and money is received, then the doubled amount itself is to be returned, but there is no lapse of the pledge.

While discussing the pledge, another (kind of loan) is being described, *satyankāra*kṛtamiti. Whatever a thing, such as a ring &c. has been placed in the hands of another with a view to complete the agreement of sale and purchase, the double of that thing should be paid if the agreement is broken. Even there, if the person by whom the ring &c. is deposited himself breaks the contract, he should give the thing itself. If the other party commits a breach of the contract, then a double of the ring &c. itself should be returned.

#### Viramītrodaya

#### Yājñavalkya, Versa 61.

*Charitreṇa*, 'by *charitra*,' by good conduct, *bandhakam kṛtam*, 'taken as a pledge', i. e., by the creditor accepted to himself a thing of great value, or of a value less than the loan, there the king or the like should compel the debtor to pay the amount together with interest. When the amount becomes doubled, the pledge lapses.

*Charitra*, i. e., religious merit, where has been made (the subject of) a pledge, there the obligation as a debt, of the religious merit does not become extinct, but the money must be caused to be paid together with the interest. This is the meaning.

*Satyankāra*—"even when the amount has doubled itself, the pledge will not become yours, but on the other hand I am liable to pay the doubled amount itself"—under such an agreement when an article is

1. Mark this term. अर्ग is sometimes expressed as अर्ग. It is that unseen virtue which is a relation superinduced, and before possessed, unseen but efficacious to connect the consequence with its past and remote cause and to bring about at a distant period or in another world the relative effect. All the Vedic injunctions laying down the performance of ceremonies and rituals which do not bear any direct tangible fruit derive force from their capacity to create this अर्ग.

2. अग्निहोत्र is the initiation and maintenance of the sacred fire by offering oblations to it. This is of two kinds: नियम-ordinary, and काल-occasional.

pledged; *Dwiguṇam pratidāpayet*, 'he must be made to pay the double'; i.e., otherwise the pledge lapses. The *Sāṃpradāyikas*, however, construe it that this has been stated by the Author in regard to a position which arises when for the purpose of facilitating the arrangement regarding a transaction of a gift or a sale, an article such as a ring &c. has been made over into the hands of the seller, and the seller has exceeded the limits of the arrangement, he should pay to the buyer the double. If, however, the transgression is made by the buyer himself, then he also should pay double the amount to the seller. (61) 5

## S'ūlapāṇi

10

## Yājñavalkya, Verse 61.

*Chūrityam*, 'religious merit', such as the maintenance of the perpetual fire *agnihotra*, a bath in the Ganges etc.—by pledging that itself what has been borrowed, that must be paid back with interest.

Where a pledge of small value with the undertaking "Truly I shall 15  
redeem this" has been given, that in the long period is to be paid back double, and must not be sold by the creditor. This is the meaning.

*Charitrabandham* is the reading by *Viśvarūpa* (61).

## Yājñavalkya, Verse 62.

A pledge should be restored to the debtor when he 20  
comes to redeem it, otherwise the creditor would be (liable as) a thief. If the creditor be not available, the debtor may pay the amount to (a member of) his family and take back his pledge.

*Mītākṣharā*:—Moreover, *upasthitasya*, of one who has 25

Redemption  
of a pledge.

come for redeeming his pledge by paying the amount, *âdhirmoktawyaḥ*, the pledge should be restored, by the creditor, and it should not be detained out of a greed for interest.

*Anyathâ*, otherwise, i. e. if it is not restored, being just in the 30  
position of *stenaḥ*, a thief, he would be punishable like a thief. When, however, the creditor is absent, after placing the *dhanam*, amount, together with interest *kule*, in the family, i. e., in the hands of his relatives, the debtor should take back his own pledge.

## S'ūlapāṇi.

## Yājñavalkya, Verse 62.

To a debtor who has come to redeem the pledge, after taking the amount together with interest the creditor should release the pledge; otherwise he would be regarded as a thief.

If the person who had accepted the pledge be not available, the amount should be placed i. e. deposited in his family, and he should get back the pledge. (62).

If, however, the creditor be absent and there are no relatives of his (who are ready) to take the amount, or when the creditor is absent and the debtor wishes to pay the amount by selling the pledge, then (the question would be) what should be done? (Anticipating this) the Author says

## Yājñavalkya, Verse 63 (1).

Or appraised at its value at that time the pledge will remain there without interest.

Mitâkṣharâ:—Tatkāleti, after ascertaining the value which the pledge had at that time, he may deposit the pledge even tatra, there, i. e. with the creditor, without interest; it does not carry interest thereafter, till the creditor restores the pledge after taking the amount or cause to be paid to the debtor an amount equal to its value.

When it was settled at the time of (advancing) the loan that 'even if the debt were doubled, a double amount only should be taken, and the pledge should not lapse', then when the debt is doubled and the debtor is not near (the question would be) what should the creditor do? Anticipating this, the Author says

## Yājñavalkya, Verse 63 (2).

(Or the creditor) may sell (the pledge) in the presence of witnesses even without (the presence of) the debtor.

Mitâkṣharâ:—dhāranikāt vinâ, without the debtor, i. e. when the debtor is not present, the creditor should recover the

amount after *vikriya*, *selling* the pledge in the presence of witnesses and also of his relatives.

The word *wā*, *or*, is intended to lay down the rule of distribution in the optional case that would arise. It is in this way: When it has not been agreed at the time of (advancing) the loan that 'even if the debt were doubled, the amount only should be taken and the pledge should not lapse,' then under the text<sup>2</sup> 'a pledge shall lapse when doubled &c.' the pledge shall lapse. In the case of (an express) contract, however, the rule laid down here (should be followed).

### Viramitrodaya.

#### Yājñavalkya, Verses 62 & 63

To a debtor who has come for paying off the amount and redeem the pledge *Ādhih*, 'the pledge', *muktaryah*, 'should be released', by the creditor, to the debtor, *anyatāh*, otherwise, through covetousness for interest, if it is not released, the creditor, is *stenah* 'a thief', i.e., becomes liable to be punished like a thief. This rule as to obstructive non-release is to be understood as he has the power<sup>1</sup>. The general exception *viz.* 'unless it is caused by superior force or the king' holds everywhere where it is fit to be applied.

*Prayojake*, 'the creditor' i.e., the one who advanced the loan, *asati*, 'he not available', i.e., he dead, or has gone abroad, or has become an ascetic; *kule*, 'in the family', i.e., among those who are entitled to take the assets of the creditor, in the order commencing with 'the sons and the rest', *dhanam*, 'the amount', together with interest, *nyasya*, 'having taken', i.e., having deposited, his own 'pledge he should get back', *ādhiṃ āpnuyat*. (62).

If, however, there is none whatsoever competent to take the assets of the creditor who has gone abroad, then as evaluated at that time, the pledge shall remain *tatra*, 'there', i.e., in the house of the creditor advancing the loan, without (carrying) interest. The meaning is, that when the money is not accepted owing to the fault of the creditor, after that time interest will not run.

*Dhāraṇāho*, 'the debtor', at the time fixed for the redemption of the pledge, is not near at hand, then the creditor, should sell the pledge

1. See note 4 on pp. 708-709 above.

2. Verse, 58.

3. i.e. it applies when the creditor taking advantage of his position to dictate refuses the delivery back.

in the presence of witnesses. The rule is, that in such a case after taking (back) his own amount, the balance he should deliver over to the king. By the use of the word *api*, 'even', are included those who are entitled to the estate of the debtor. (62, 63).

5

S'ūlapāṇi.

Yājñavalkya, Verse 63.

If the pledge is, on any account, not given (back) to the debtor, then being assessed for its value at that time, it shall remain at that, at  
10 the house of the taker of the pledge.

When however, *dhāraṇako*, 'the creator of the pledge' is not available, then after selling it, the creditor may take his own amount, and pass over (the remainder) to the king. (63)

Yājñavalkya, Verse 64.

15 When, however, a debt under a transaction of pledge has become doubled (by the accumulation of interest), then the pledge shall be returned after double the principal amount has been received (by the creditor) from the profits.

20 Mitākṣharā :—Yadā, *when*, the amount advanced, dwigunibhūtam, *has become doubled*, tadā,

The Author means *then*, tadutpanne, *from the profit, i.e., from* tions a special case the receipts derived from the pledge, tadādhau, of a usufructuary *after the pledge was made and when dwigune,*

25 pledge. *a double, has been praviṣṭe, received, by the* creditor, the pledge should be restored by the

creditor. Or if the debt has become doubled without possession (being transferred) either on account of an agreement at the beginning that 'when the pledge is delivered and the debt has been  
30 doubled you should restore the pledge', or on account of some other reason the amount has become doubled, then, after the pledge has been made over to the creditor for enjoyment, it should be restored when the profits recovered from it make up the doubled amount. If more be enjoyed, that too should be restored. This text is intended  
35 to lay down the rule that a pledge is to be enjoyed only for paying



off entirely the original loan together with interest. It is called in popular language a *kṣhayādhi*, a pledge where the liability is diminished.<sup>1</sup>

Where, however, it was agreed that possession of the pledge  
was intended only for (securing) the interest, 5

\* Page 42. there even if the amount has increased more  
than the double, the pledge will be used  
only until the payment of the original loan. This very thing has  
been made clear by Brhaspati: "The debtor shall get back the  
usufructuary pledge the time for which has been matured or after 10  
paying off the principal amount; if it has exceeded, then the creditor  
does not get the amount. The debtor also will not get back the  
pledge except with mutual consent." The meaning of this text is  
this: That wherein the profits are to be enjoyed is called a  
usufructuary mortgage or pledge. That moreover is twofold, that 15  
which is intended to pay off the original principal together with the  
interest, and the one to pay off interest simply. Of these also, in the  
case of a mortgage which is intended to pay off the original principal  
and the interest, the debtor shall get back the pledge when the  
*time for (payment of) it becomes matured (Pūrṇakālam)*, i.e., when the 20  
original amount together with the principal has been received by the  
creditor, then the debtor shall get back the pledge. In the case of  
the pledge which is intended for reduction of the interest only, the  
debtor shall get it back after paying off the principal amount.  
*Sāmaka* is the same as *sama* (equal), i.e., equal to the original 25  
principal. The (same) Author mentions an exception to this: 'if it  
has exceeded without mutual consent'. *It*, i.e. the pledge, *has*  
*exceeded*, i.e. has transgressed the limit, i.e. if the profits have  
exceeded even the interest, *then the creditor will not get the amount*.  
The creditor does not get the principal amount, i.e. the debtor shall get 30  
back the pledge even without paying the original amount advanced.  
If, however, the pledge has not been exceeded, and is even  
insufficient for (paying off) the interest, then even after paying off  
the principal, the debtor will not get back the pledge, but will get it  
only after paying away the balance of interest. Again the (same) 35

1. Cf. the *Mortuum radium* of English Equity.

Author mentions an exception to both these rules. The text 'if it has exceeded, &c.' has been mentioned as applying in the absence of a mutual agreement between the creditor and the debtor. With mutual consent, however, even if the pledge be exceeded, the creditor  
 5 may enjoy it until the original principal is paid, and also (on the other hand) even if it be insufficient, the debtor gets it back by the payment of the original principal only.

Here ends the Chapter on the Recovery of Delits. .

### Viramitrodaya

10 The Author states a special rule in the case of a pledge with possession.

#### Yājñavalkya, Verse 64.

If *Rṇam Adhau*, 'a debt under a pledge', on account of enjoyment, *dwiguṇtōhātām*, 'has become doubled', then when the amount so  
 15 doubled has passed to him, the pledge should be released by the creditor. This is the meaning.

This is what is called a *Kṣayādhi* 'a self-effacing pledge.' This, moreover, would be so when it has been so agreed upon by the creditor, as it is based on the same principle as the text of Viṣṇu<sup>1</sup> viz.: "Even  
 20 if the maximum amount of interest is paid, the mortgaged article, if it is immovable (shall not be returned), unless there be an agreement to that effect."

One who is afraid of an illegality, should release the pledge; vide this text of Brhāpati<sup>2</sup>: "Where the use of a pledge (is continued)  
 25 after twice the principal has been realised, (receipt) of the compound interest and the exaction of the principal and interest, that is (called) usury, and is reprehensible."

It is also said that except under a special agreement it does not carry interest. (64)

30 Here ends, in the commentary on Yājñavalkya,  
 The Chapter on the Recovery of Debts.

S'ūlapāṇi.

Yājñavalkya, Verse - 64.

"When the profits of this reach double the quantity of the amount, my pledge is to be released", thus saying when a pledge is offered, then when from its income double the amount (advanced) has been realized, then the pledge is to be released and not to be enjoyed. (64) . 5

Chapter IV.

THE LAW OF DEPOSITS.

Yājñavalkya, Verse 65.

Property which being placed in a box is delivered into the hands of another without being described, is called a deposit; (and it) should be returned in the same condition (in which it was when delivered). 10

Mitākṣharā :—A thing which holds the things deposited, being different from it, is a Vāsana, box, a receptacle, e.g., a Karandā, &c. dravyam; property, wāsanastha, which is placed in it, the particulars as to the quality and the quantity

Upanidhi  
described.

of which anākhyāya, is without being described i. e. mentioned, and (after it is) sealed, arpyate, is delivered, in confidence for safe preservation, anyasya haste, in the hand of another, that property is called, aupanidhikam, deposited property. As says Nārada: "That (property) which being under a seal is deposited without being counted or known, should be known as an upanidhi; while it is known as nikṣhepa where it is counted." 20 25

Pratideyam tathaiva tat, should be returned in the same condition. The person with whom it has been deposited, should return i.e. restore it back to the depositor in the same condition in which it was delivered bearing the seals as before.

S'ūlapāṇi

Yājñavalkya, Verse 65.

Vāsanam, 'a receptacle' to hold the deposit, such as a casket etc.; placed there without detailing its form, number etc.; what is deposited in another's hand, that is *upanidhikam*, 'deposited property'. That, *tathaita*, 'as it was', i. e. marked with the seals etc. should be returned. (65)

The author mentions an exception to the rule as to restoration

Yājñavalkya, Verse 66 (1).

That, however, which has been carried away by (an act of) the king, Providence, or thieves shall not be caused to be restored.

Mitākṣharā :—Tam, *that*, deposit, which was carried away *rājñā daivena*, by (an act of) *the king or by*

An exception to *Providence e. g. by floods &c. or by thieves,* taskaraiḥ, and has (thus) perished, *na dāpyaḥ*,  
15 the rule as to res- *he shall not be compelled to restore.* Of him with *upanidhi*. whom it was deposited, *vis.* the creditor, the

property lost being that of the real owner<sup>2</sup> him-  
self, provided it (i. e. the loss) was not brought about<sup>3</sup> by fraud. As  
20 says Nārada<sup>4</sup> :—"If a deposit is lost, together with the property of  
the depositary, the loss shall be the depositor's. The same rule shall  
obtain, if the loss has been caused by fate or by the king, unless the  
depositary should have acted fraudulently."

1. See also Kātyāyana Verse 594.

2. The word *Dhanin* (धनं) here stands for the debtor who is the real owner of the thing deposited. The meaning is that if a loss takes place under the conditions specified the loss is that of the depositor and not of the depositary. Cf. s. 153 of the Indian Contract Act.

3. Mark the expression—*जिह्मकालम्*. If it were the object of the Author simply to indicate direct fraud on the part of the bailee the expression *जिह्मकालम्* would have sufficed. But the suffix *कालम्* is purposely used with a view to cover the case not only of direct fraud but of any fraud whether direct or indirect to which the creditor was a privy.

4. Ch. II. 9.

The Author mentions an exception to the above rule

### Yājñavalkya, Verse 66 (2).

When, however, the loss occurs after demand and non payment<sup>1</sup> the depositary should be fined and compelled to pay an (amount) equal (to the deposit).

Mitākṣharā :—When, *mārgite*, demanded, by the owner if he do not pay, then after that time, even if *bhresho*, the loss, i. e. the destruction occurs on account of the king &c., the bailee should be made to pay to the owner the amount as determined by (the value of) the original, as also to the king an equal fine.

\* PAGE 13.

### S'ūlapāṇi. 66.

### Yājñavalkya, Verse 66.

If, when demanded and not delivered, its *bhresho*, 'loss', i. e. destruction, takes place, then he should be made to pay, and also a fine the king should take for himself. If it is lost owing to the fault of the depositor of the bailment, then he himself must pay, as says Kātyāyana<sup>2</sup>: "By whosoever fault is the property lost or is taken away, he must be compelled to make good that amount together with interest excepting when caused by fate or the king." (66).

The Author mentions a penalty for (wrongful) appropriation.

### Yājñavalkya, Verse 67 (1).

If he, (i. e. the bailee) of his own will,<sup>3</sup> makes a living, he shall be punished, and also made to pay it with the increase.

Mitākṣharā :—He who, *swechchhayā*, of his own will i. e. without the permission of the owner,<sup>4</sup> *ājivati*, makes a living i. e.

1. At p. 42. I. 30 वने is a misprint. It should be अदने—इदने.

2. Verse, 594.

3. In Roman law the use of a thing deposited without the consent of the owner constituted *furtum* (See Justinian Bk. IV. I. 6.). In English law such use would not be larceny without the intent to deprive altogether the owner of his property in the deposit.

4. i. e. without the consent or permission of the bailor.

appropriates or deals with it by lending (at interest) with a view to (make) a profit (out of) the money<sup>1</sup> deposited, should be fined having regard to the extent of the appropriation and also of the profit (made by him); and he should also *dāpyaḥ*, be made to restore, the deposit  
 5 *sodayam*, together with the increase, i.e. in the case of an appropriation, together with interest, and in the case of a loan advanced, together with the gains realised (in the transaction). The (special) rule of interest (in such cases) has been stated by Kātyāyana<sup>2</sup>: "A deposit, the balance of interest, (an article) sold, and (the price of) a thing  
 10 purchased, if not paid on demand shall bear interest at five per cent." This rule moreover, is to be observed where there has been (complete) appropriation. In case, however, where it is lost on account of neglect or ignorance, the same (Author) has mentioned<sup>3</sup> a special rule viz.:—"Where the deposit has been appropriated and used up, he  
 15 should be made to pay (it back together) with interest and an equal amount if neglected; where it (the deposit) has been lost on account of ignorance, he should be made to pay a little less." 'Little less' *Kinchinnyūnam* i. e. less by a fourth part.

20 The Author extends the rule regarding a deposit, to the cases of *Yāchita* &c.

Yājñavalkya, Verse 67 (2).

The same law applies in the cases of *Yāchita*, *Anvāhita*, *Nyāsa*, *Nikṣhepa*, and (such) other kinds (of deposits).

25 *Mitākṣharā*:—When, on festive occasions such as a marriage &c. clothes, ornaments &c. are begged for and taken away it is (called) a *Yāchitaṃ*.<sup>4</sup> Where a thing is placed in the hands of one, and by him also has thereafter (*anu*) i. e. afterwards further on; been placed in the hands of another with (the direction): "(Please) give  
 30 it to the owner" it is (called) an *Anvāhitaṃ*. What is known as *Nyāsa* is a delivery to a member of the house in the absence of the owner and without<sup>5</sup> being shown to him, with (the direction) "this

1. The original word is दायी it may also mean a thing.

2. Verse, 506.

3. Verse, 597.

4. Cf. the *Commolation* of the Roman Law.

5. There is a mistake in the print of the text on p. 43, l. 14. The correct reading is गृहस्थाभिरेव दानं विना and not गृहस्थाभिरे दानं विना *Nyāsa* is a secret deposit handed over to some member of the house in the absence of the owner.

is to be made over to the owner of the house." A delivery in his presence, however, is a *Nikṣhepa*.

By the (use of the) word *ādi*, and others, are included cases of a deposit *Nyāsa* e.g. of gold &c. in the hands, of a goldsmith &c. for preparing a bracelet &c. as also of *mutual bailments* 5 as e.g. in cases where there occurs a need of each other with words "you should keep this mine, and I shall keep this yours," as says Nārada<sup>2</sup>: "The same law applies in the case of *Yāchita*, *Anvāhita* and other such deposits, articles made over to an artist, *Nyāsa*, and *Pratinyāsa* deposits." In the case of these i. e. the 10 *Yāchita* &c. this very rule i. e. the rule in the case of a deposit, viz. of repayment &c., should be understood (as being applicable).

Here ends the Chapter on Deposits.

### Viramitrodaya

In regard to *Nikṣhepa* or deposit, a title at law, the Author says 15

Yājñavalkya, Verses 65, 66, 67.

*Vāsanam*, 'a receptacle' such as a casket or the like, fit to hold a deposited article; property lying there, the quantity &c., *anākhyāya*, 'without being declared', i.e., without mentioning, *anyasya* 20 *haste*, 'in another's hand', for protection and out of confidence, arpyate, what 'is delivered', *tadupanidhikam*, 'that is called an *upanidhi*' a special kind of deposit.

The general characteristics of a *nikṣhepa* deposit, however, should be noted as stated by Nārada<sup>3</sup>: "Where one, out of confidence entrusts his own property with another without suspicion, it is called by the wise 25 a deposit, a title of law". "Of a good family, of good conduct, well-versed in law, and a truth-teller," these and others stated by Manu<sup>4</sup> are only an extension of (the qualities for) the confidence being reposed.

There, *upanidhikam dravyam*, 'property which has been deposited as *upanidhi*,' *tathairā*, 'as it was', i.e., without declaring or counting, as 30

1. A *Pratinyāsa* is a mutual bailment both parties exchanging deposits with one another.

2. Ch. II. 14.

3. Ch. II. I.

4. Ch. VIII. 180.

before marked by the seals &c., *pratideyam*, 'is to be returned' to the depositor. (65)

There, an *upanidhi*, deposit, if either by the king, by Providential dispensation such as by fire, or by a thief, is taken away, in such cases the acceptor of the deposit is not to be compelled to make good to the depositor.

If, however, when *mārgite*, 'sought' i.e., demanded by the depositor, even then *adatte*, 'if not given', and in regard to that property a loss or deterioration occurs as being caused by the king or Providence, that *upanidhi* by its value, to the depositor and an equal amount as fine to the king, the acceptor must be compelled to pay. By the use of the word *cha*, 'and also', is included the depositor.

*Svecchayā*, 'of his own will', and not with the consent of the depositor, *tam*, 'that', i.e., the *upanidhi*, deposit, *ājīvan*, 'makes a living upon', i.e., appropriates it by use for making a profit of the interest, *rājā dandyaḥ*, 'he should be punished by the king'; *tam* 'that', *upanidhim*, 'deposit', *sodayam*, 'together with interest', he should be compelled to pay to the depositor.

Here moreover, *Kātyāyana* states the rule as to interest: "A *nikṣhepa* deposit, the balance of interest, the proceeds of a sale, as also of a purchase, when being asked for if one does not pay, each carries interest at five per cent".

*Manu*: "What was carried away by thieves, or drowned in water, as also what was consumed by fire, one need not pay; provided one does not appropriate any portion." Collecting together, i.e., taking a little, and the remainder he deposits elsewhere, or neglects the entire quantity, on the ground 'I am not to be responsible for it', then the whole must be made good. This is the meaning. *Vyāsa*: "Where the deposit has been appropriated and used up, he should be made to pay it, together with interest, and an equal amount if neglected; where it has been lost on account of ignorance, he should be made to pay a little less."

*Manu*: "If by false means any man deprives another of his property, he along with his accomplices, shall be publicly punished by the various modes of corporal chastisements, *Vadha*, 'chastisement', such as beating, &c."

1. Verse 506.

2. Ch. VIII. 190.

3. *Vijñāneśvara* assigns this text to *Kātyāyana*, while here and in *Parāśara Madhava* it is assigned to *Vyāsa*. See *Kātyāyana* Verse, 597.

4. Ch. VIII. 194.



*Yāchita* &c. *Ayam*, 'this', i.e., the one stated in connection with the *upanidhi* deposit, *vidhiḥ*, 'rule', i.e., the procedure, such as the liability or the non-liability to pay on occasions effected by the king or fate, should be understood in the case of *Yāchita* and like other kinds of deposits. Where, on the occasion of a marriage or like festivity, clothes, ornaments, etc., are asked for and borrowed on an undertaking for repayment, that is called *Yāchitam*. *Anvāhitam*, when the owner has deposited a thing with one, and by that one also, (*anu*) afterwards deposited further on with another under the direction of the depositor. *Nyāsa* is that where without showing to the master of the house, and even in his absence, a deposit with his people with the words '(this is) to be made over to the master of the house.' Handing over an article to an artisan for preparing into an ornament, after describing it in his presence and giving it over to him is *Nikṣhepa*. 5

By the use of the word *A'di*, 'and like others' are included things bought (but not paid) and like others mentioned by Gantama. For while stating the liabilities, under the text 'the sons should discharge', Gantama, says: "An open deposit, a sealed deposit, a loan for use, an article brought on hire, and a pledge, when lost without the fault of the holder, (shall not involve) any blameless person." *Anakṛtām*, an article 'brought on hire', i.e., brought by paying a rent. 15 20

When the depositor is available, the deposited article must be delivered over to him, as says Brhaspati: "By whomsoever has an article been deposited, and by whatever process, to him and in the same manner should it be delivered over to him and not to any other." 'Any other', i.e., successor, such as the son and like others. 25

Manu: "He who delivered himself, when deed, and the bailee delivers it back to his successor, he must not be charged by the king, nor by the cognates of the depositors."

Under a special agreement (to that effect), however, even when the depositor is living, delivery to the successor may take place in regard to the *Yāchitādān*, which has been almost described above; so says Kātyāyana: "After the (stipulated) time has arrived, and the purpose is over, when he does not deliver although asked for, if the article is lost 30

1. Ch. XII. 38.

2. Ch. XI. 39.

3. अङ्गनद्विपदपङ्कजम् वा, इत्यत्र.—Price entirely or partly not paid for.

4. Ch. XII. 9.

5. Ch. VIII. 187.

6. Verse, 607.

or even taken away (by any other), then the borrower should take the price and offer it". 'Lost'—even by an act of God.

Thus in the Commentary on Yājñavalkya ends  
the Chapter on Deposits.

### S'ūlapīṭi.

#### Yājñavalkya, Verse 67.

The *Aupanidhi* deposit, if the bailee puts to use without the consent of the depositor then he should be fined in an equal amount by the king, and the amount also should be caused to be paid to the depositor together with interest.

*Yāchitani*, ornaments &c. brought for decoration. Where the right of ownership is given it is *Nyāsa*: "Where through fear of robbers, king, and the enemies, and also for deceiving the *Dūyādas*, a chattel is deposited in the house of another man, that is called a *Nyāsa*" thus characterised by *Brhaspati*<sup>1</sup>. "Where one's property, out of confidence one deposits with another without any suspicion, that is called *Nikāhepa* by the wise" thus stated by *Nārada*<sup>2</sup>. In regard to these also, the rule viz. "He is not to be made to pay what is taken away by you," is to be understood to apply. *Vyāsa*<sup>3</sup> states a special rule: "Where the deposit has been appropriated, he should be made to pay (it back together) with interest, and an equal amount if neglected; where it has been lost on account of ignorance he should be made to pay a little less."

Here ends the Chapter on Deposits.

### Chapter V.

#### 25 OF THE WITNESSES.

It has been said above<sup>4</sup> that 'evidence has been laid down to consist of a writing, possession, and witnesses.' Of these, (the law as to) possession has been examined. Now begins an examination of the nature of (the rules of law as to) witnesses.

1. Oh. XII. 2.

2. Oh. II. I.

3. See note 3 on p. 842 above.

4. Yājñ. II. Verse. 22, p. 743 ll. 16-18.

One becomes a (proper) witness by his actually having seen or heard (a thing), as says Manu<sup>1</sup>:—"Witness Evidence is admissible if (it is) in accordance with what has actually been seen or heard (by the witness)." Such a witness, moreover, is of two kinds, appointed and unappointed. When marked as a witness, he is called an appointed, and when not marked, an unappointed. Of these the appointed is of five<sup>2</sup> kinds and the unappointed of six, and thus these witnesses are of eleven kinds. As says Nârada<sup>3</sup>:—"Eleven varieties of witnesses are distinguished in law by the learned. Five of them are known as appointed, and the other Six as unappointed." Their (further) classification has also been indicated by the same Author<sup>4</sup>:—"A subscribing witness, one who has been reminded, a casual witness, a secret witness, an indirect witness, these are the five sorts of appointed witnesses".

\* Page 44.

Kâtyâyana<sup>5</sup> has described the characteristics of the subscribing and other witnesses (thus): "One who was invited by the claimant<sup>6</sup> himself and who has been entered into the document, is called a subscribing witness, and who has been made to remember without the document (being shown to him) (371)" The same Author has explained the meaning of the expression 'Made to remember without the document' (smâritaḥ patrakâdṛte) thus: "He, moreover, who for the purpose of establishing a transaction, is reminded again and again by the claimant after (his) having seen (the document evidencing) the transaction is called here a witness 'who has been reminded' (372)." He, however, who having arrived by chance, has been made (to subscribe as) a witness is a casual witness. The same Author has pointed<sup>7</sup> out a distinction among

1. Ch. VIII. 74.

2. Here there is an error in the print in the Sanskrit text on p. 43. l. 25. It should be नव दशः पञ्चविधः अष्टमश्च द्वाविंशद्विधश्चैव:

3. Ch. I. 149.

4. Nârada Ch. I. 150.

5. Verses, 371-375.

6. दातृ—the party who sets up a claim.

7. Verse, 373.

- these witnesses even when they have not subscribed to the document :  
 “One (specially) called on the occasion, and one who had gone (merely) by chance, these two (kinds of) witnesses can establish the claim of the plaintiff, although they are not entered into the document (373)”. Moreover : “He is called a *secret witness* who while remaining concealed, has been made to hear distinctly the words of the defendant by the plaintiff for establishing his claim (374)”  
 5. And “He is called an *Indirect witness* who, either from direct or hearsay knowledge corroborates broadly the statements of (actual) witnesses (375).”  
 10

Nārada<sup>1</sup> has also pointed out the six kinds of the unappointed (witnesses): “The village, a judge, a king; one commissioned<sup>2</sup> for (special) duties by the disputants, and one deputed by the claimant. In family quarrels, members of the family shall  
 15 (also) be witnesses.” The mention of ‘a judge’ is indicative by implication also of ‘a writer’ and ‘a *Sabhyā*’<sup>3</sup>. “The writer<sup>4</sup>, the judge, the *Sabhyās* have, in order, been laid down as witnesses when the case is under investigation by the king.”

- Such witnesses ; of what kind and how many will (these) be ?  
 20 (Anticipating such a question) the Author says

### Yājñavalkya, Verses 68, 69.

- Men devoted to religious austerities, men liberally disposed, men of high families, truthful men, men (chiefly) devoted to religious observances, straightforward men,  
 25 men blessed with sons, and men possessed of wealth (68)  
 are to be known as competent witnesses, (provided they are) not less than three, and devoted to the performance of Śrauta<sup>5</sup> and Smārta rites ; each respectively

1. Oh. I. 151-152.

2. कार्यवेदिनः—‘कार्यवेदनो वः’ is another reading & Dr. Jolly translates it as “one acquainted with the affairs of the two parties.”

3. See p. 636 n. 4 above.

4. Kātyāyana, Verse. 355.

5. Śrauta and Smārta rites are those laid down in the Śruti and the Smṛtis. See Yājñavalkya Āchāra. Verse 97 and Vijñāneswara’s prefatory remarks thereon. pp. 267-268 above.

according to their caste or class, or all for all (castes and classes).

**Mitākṣharā** :—Tapswināḥ, men devoted to religious austerities i. e. habitually devoted etc.; dānasīlāḥ, liberally disposed, i. e. devoted to making donations; kulīnāḥ, of high families, i. e. born in high families; satyawādīnāḥ, truthful, i. e. having a character for truth-speaking; dharmapradhānāḥ, devoted to religious observances, and not to observances actuated by Artha and Kāma; rjavan, straightforward, not crooked; putrawantāḥ, blessed with sons, i. e. with living sons; dhanānvitāḥ, possessed of wealth, i. e. possessed of considerable wealth such as gold etc.; śrautas-mārta-kriyāparāḥ, devoted to the performance of śrauta and smārta rites, i. e. devoted to the performance of ordinary and special rites.

Men of this description, tryavarāḥ, not less than three, are (accepted as) competent witnesses. Those

The number of than whom three will not be below i. e. less, are witnesses. tryavarāḥ, men not less than three i. e. men who are not on this side of (the number) three.

The meaning is, that for more than this, their number would be according to the requirements. Without going outside the caste, is according to caste, yathājāti. Castes such as Mūrdhāvasikta<sup>2</sup> and others born of descending<sup>3</sup> or ascending unions. Among these, for the Mūrdhāvasikta, the witnesses shall be the Mūrdhāvasikta. The same (rule) should be observed with reference to the Ambaḥbhas and others.

1. The three Puruṣārthas—ends and aims of all worldly activities—are Dharma, Artha and Kāma, the securing of religious, pecuniary, and personal advantages.

2. मूर्धवासिक (Murdhāvasikta)—see the 'evolution of castes' as given in Yājñ. Āchārādhyāya, Verses 90-96 pages 241-267 above. The issue begotten by a Brāhmaṇa on a Kṣatriyā wife is called Mūrdhāvasikta. Yājñ. Āchāra. 91.

3. अनुलोम i. e. the issue of the union of the male of a higher class with the female of a lower class. These have been indicated in Verses 91 and 92 of the Āchārādhyāya of Yājñavalkya, pages 248-251. The contrary of this term is प्रतिलोम (Pratiloma) the issue of an inverse union i. e. the Union of the male of a lower order with the female from a higher order. See Verses (93-95) Do. Do (pages 252-260).

Not going beyond the class is according to the class, yathâvarṇam. Classes, such as the Brâhmanas and others. Here, in cases of Brâhmanas, Brâhmanas alone of the specified description and number can be witnesses. The same (rule) should be observed in the case of Kṣatriyâs and others. Similarly, in cases concerning women, women alone can give evidence. As says Manu<sup>1</sup>: "Women should give evidence for women".

In the absence of persons of the same caste or class all i. e. the Murdhâvasiktas and Brâhmanas &c. will become (proper) witnesses in the cases of all i. e. Murdhâvasiktas &c., Brâhmanas and others.

In the absence of witnesses of the aforesaid description, in order to establish the rule that others for whom there is no objection may be (accepted as) witnesses, it is necessary to mention those who are not (fit to be) witnesses. These have been pointed out by Nârada<sup>2</sup> as of five sorts:—"The incompetent witnesses, too, have in law<sup>3</sup> books been mentioned by the learned to be of five sorts; (viz. witnesses who are incompetent) on account of a (special) text of law, on account of depravity, of contradiction, on account of a voluntary deposition, or of an intervening death."

It may be asked what witnesses again are incompetent under a special text? So the (same) author<sup>4</sup> says: "Learned Brâhmanas, hermits, aged persons as also ascetics and others, are incompetent (as) witnesses under a special text of law; and no (special<sup>5</sup>) reason is given for this (rule)." Hermits i. e. 'Wânâprasthas<sup>6</sup>. By the term Âdi, and others, are included those who have any dispute (at law) with the father or (such) others. As says S'ankha: "Persons

1. Oh, VIII. 68.

2. Ch: I. 157.

3. 'शास्त्रेतिवत्' is another reading &c. "In this law"

4. Nârada Ch. I. 158.

5. The reason why the persons referred to in this paragraph are excluded seems to lie in their entire renunciation of earthly interests, which render them unfit to appear in a court of justice. Cf. Manu VIII. 65 — Dr. Jolly.

6. One in the third stage of life, the four stages being ब्रह्मचर्य, गृहस्थ, वानप्रस्थ & संन्यास.

having a dispute (at law) with the father, resident students at the preceptor's home, ascetics, hermits. and the *Nirgranthas*<sup>1</sup> are incompetent (to be) witnesses."

Persons unfit to be witnesses on account of depravity have been pointed out (by him<sup>2</sup>) thus: "Thieves, robbers, dangerous characters, gamblers, and rogues<sup>3</sup>, are incompetent (as) witnesses on account of depravity; there is no truth (to be found) in them." *Dangerous characters* (chaṇḍāḥ) i. e. of excitable temper. *Gamblers* i. e. those engaging (themselves) in gambling.

The same Author<sup>4</sup> has pointed out the nature of witnesses incompetent on account of contradiction: "Should one of the witnesses entered on record or summoned by a party depose to a falsehood, all of them become incompetent (as) witnesses on account of a Contradiction".

Similarly the nature of a *Swayamukti* or a volunteer witness has been described<sup>5</sup>: "A volunteer witness is he, who without being appointed to be a witness, comes of his own accord to make a statement, (and) is termed a spy in the law-books; he does not deserve to bear testimony."

The characteristics of a witness (rendered) incompetent on account of intervening decess have been given thus<sup>6</sup>: "When a claim has to be proved, and the claimant is not in existence, for whom can (any person) bear testimony? And so such a person is an incompetent witness by reason of intervening decess." i. e. either by the plaintiff or the defendant,—who has to prove a (particular) claim (by informing his witness) thus: 'you shall be my witness for this claim'; when such a one—i. e. either the plaintiff or

1. निर्ग्रन्थ (Nirgrantha)—free from all ties or hindrances—a saint or devotee who has renounced all worldly attachments, and wanders about naked and lives as a hermit. The term has also the following meanings:—an idiot, a fool, or a gambler; 'without a restraint'. This term is also used at times in reference to Jain or Buddhist monks—a fact evidencing a particular attitude towards this sect at one time.

2. Nārada Ob. I. 159.

3. वधकाः . वधकाः is another reading: assassins.

4. This text is assigned to *Kātyāyana* by the Author of the *सप्तहस्तसूत्र*. See Verse 359 Kāte.

5. Nārada I. 161.

6. Nārada Ob. I. 162.

the defendant is not in existence *i. e.* is dead, and the claim has not been proved, in what claim or for whose behalf should one bear testimony as a witness? and thus one ceases to be a witness, on account of intervening decease.

- 5       Where, however, the sons have been told by their father at the time of death or even while he was in (sound) health, that in such and such a claim, such and such persons will be witnesses, in such a case one can be a competent witness even though there has been an intervening decease. As says Nārada: "A witness  
10 becomes incompetent on account of intervening decease, unless he has been named by the dying man." And also, "Where a witness has been named by one while (perfectly) free from any disease in a claim which is in accordance with the law, even if the claimant die, the witness (still) continues to be (a competent) witness in claims such  
15 as for the six kinds of property *viz.* *Anrāhita* and others."

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S'ūlapāṇi.

Yājñavalkya, Verse 68.

- Rjavo*, 'straightforward,' *i. e.* not crooked. Of this kind should the witnesses be; should be understood. Thus is the connection with what  
20 will be stated hereafter.

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S'ūlapāṇi.

Yājñavalkya, Verse 69.

- Three is the least *i. e.* lowest number of whom are *tryavardh*, 'not less than three'. The meaning is that they shall be not less than  
25 three. *Yathājāti*, 'according to the caste &c.'; to whichever caste one may belong, of that caste shall his witnesses be; so, of a touchable caste, a touchable. Or in the case of all, all may be witnesses, since Manu, has observed: "Witness evidence is admissible if (it is) in accordance with what has actually been seen or heard (by the witness)" This  
30 moreover, is indicative as applicable as a means (of evidence)—the meaning is one is admissible as a witness who has evidence regarding the subject matter in dispute



The Author mentions those who are incompetent<sup>1</sup> witnesses

### Yājñavalkya, Verses 70, 71.

A woman, a minor, an old man, a rogue, an intoxicated person, one violent, one against whom an accusation has been brought, a stage-dancer, a heretic, 5  
a forger, one deformed (70).

One degraded, a relative, one having an interest in the subject-matter (of the suit), an ally, an enemy, a thief, a desperado, one who has been found guilty, an outcast, and the like others are incompetent witnesses. 10

Mitākṣharā:—Strī, a woman, is well known; bālaḥ, a minor, one who has not attained (the age of) capacity; vṛddhaḥ, an old man, one who is above eighty. The use of the term vṛddha is indicative also of others e. g. learned Brāhmaṇas etc. for whom there is a (special) prohibition in the texts<sup>2</sup>; kitavaḥ, a rogue, one who 15  
gambles with the dice; mattaḥ, an intoxicated person, i. e. by drinking etc.; unmattaḥ, one violent i. e. one possessed by an evil spirit; abhisastaḥ, one against whom an accusation is brought, i. e. against whom a charge is pending, such as of killing a Brāhmaṇa etc.; rangāvatārī, a stage-dancer, i. e. a professional actor; 20  
pākhaṇḍinaḥ, heretics, such as Nirgranthas<sup>3</sup> and others; kūṭakṛt, a forger, i. e. one who makes false documents etc.; vikalendriyaḥ, one deformed e. g. without an ear etc.; patitaḥ, one degraded, such as a Brāhmaṇa-killer etc.; āptaḥ, a relative i. e. a friendly relative; 25  
arthasambandhi, one having an interest in the subject matter (of the suit), i. e. the subject matter of the suit which is under investigation; sahāyaḥ, an ally, i. e. a partner; ripūḥ, an enemy, an opponent; taskaraḥ, a thief, a robber; sāhasī, a desperado, one menacing (others) by the (sheer) force of his strength; dr̥ṣṭādoṣhaḥ, one who has been found guilty, i. e. who has been 30

1. There is a mistake in the print of the text at p. 45 l. 18. for नविनाद् साक्षिणी read नविनादसाक्षिणी.

2. e. g. Manu. VIII. 64-67. Nārada. I. 157-171.

3. Jain or Buddhist monk. See note on p. 849, above. See also the Mitākṣharā on Yājñ II. 192<sup>2</sup> regards कपटिन्: देहस्य प्रामाण्यमेव देहादिन; नमः भोजनादयः ।

found out as having told an untruth; *nirdhūtaḥ*, an outcaste, one abandoned by his relatives.

By the use of the term *Ādya*, 'and others', are also included others who have been mentioned in other *Smṛtis* as incompetent witnesses on account of depravity, contradiction, volunteering a deposition, or of intervening decease. These (as also) a woman, a minor &c. are not fit to be witnesses.

\* Page 46.

### S'ūlapāṇi.

10 Yājñavalkya, Verses 70, 71.

These, i. e. women &c. although possessing the aforestated qualifications must not be admitted. *Kūṭamb*, 'a rogue', one who starts betting. *Rangavatāra*, 'a stage dancer', i. e. one who maintains himself upon the stage. *Sihasi*, 'a desperado', one who commits thoughtless acts; *draṣṭadōṣaḥ*, 'one who has been found guilty', i. e. in elsewhere; *nirdhūtaḥ*, 'an outcaste', one who has been banished from the village. By the use of the word *Ādya*, 'and others', are included, the *Śrōtrīyas*, ascetics, and others stated in other *Smṛtis*. (70, 71).

20 "Witnesses are known to be not less than three"<sup>2</sup>; the Author mentions an exception to this text


Yājñavalkya, Verse 72 (1).

When approved of both parties, even one person becomes a (sufficient) witness, if he is conversant with his duties.

25 Mitākṣharā:—Dharmavit, one is said to be conversant with his duties, who performs the ordinary and special rites after (properly) understanding them. About a witness sole. Such a one, even if alone, is a (sufficient) witness, *ubhnyānumataḥ*, when approved of both parties. By the force of the word *api*, even, even two (would do). Although under the text<sup>3</sup>: 'Devoted to the

1. e. g. see Nārada. I. 157 See 848. p. 15-20, above.

2. Verse 69 above p. 846 l. 26. 3. Yājñavalkya II 69 p. 840 l. 27.

performance of the *S'rauta* and the *Smārt* rites', the (condition regarding the) observance of duties holds equally even in the case of more than three persons, still these are admissible as (competent) witnesses even in the absence of a consent from both sides, while a single witness or two are accepted as sufficient only with the consent of both (parties), and thus the use of the expression (*tryavara*) 'not less than three' has a purpose. 

The Author mentions an exception to the text,<sup>2</sup> "men devoted to religious austerities, men liberally disposed &c."

Yājñavalkya, Verse 72 (2) 10

In the cases of adultery, theft, insult, and a *Sāhasa* (a heinous offence), any person may be a witness.

Mitākṣharā:—Sangrahaṇa, *adultery*, and other offences the characteristics of which will be mentioned

In cases of later on<sup>3</sup>. In these cases all persons, whether 15  
theft and other prohibited by special text or wanting in the  
proceedings even special qualities of austerities, are competent.  
persons (specially) But here also, the persons who are incapacitated  
prohibited may be from being witnesses on account of depravity,  
accepted as wit- of contradiction, or on account of a volunteered 20  
nesses. statement, are not acceptable as witnesses, the  
cause (of incapacity) viz. the absence of  
(truthfulness) &c. being also applicable here.

Although on account of the text<sup>3</sup>: "Manslaughter, robbery, an indecent assault upon another man's wife, and the two species 25  
of insult, such are the four kinds of Heinous offences," adultery with women, robbery, and assault are regarded as heinous offences, still, these very offences become heinous when they are committed in public (by the offender) in mere brute force, while when committed in secret they are designated by the words adultery &c. and hence they 30  
have been distinctly mentioned in addition to the *Sāhasa* (or Heinous offences).

1. Yājñ. II. 69. p. 846

2. See Verse 68.

3. Of Nārada. Ch. XII. 2.

## Viramitrodaya.

'Evidence has been laid down to consist of a writing, possession, and witnesses' so has been stated above<sup>1</sup> Of these, possession has been discussed. Now the Author discusses the law about witnesses by an entire Chapter

Yājñavalkya, Verses 68, 69, 70, 71, 72, 73.

*Tapasvinaḥ*, 'men devoted to religious austerities', i. e. as a matter of habit devoted to austerities; *dānasīdāḥ*, 'liberally disposed', i. e. devoted to making donations; *kulindāḥ*, 'of high families', i. e. born of families free from any taint of mixture &c.; *satyavādinaḥ*, 'truthful men', i. e. having a character for truth-telling; *dharma-pradhānāḥ*, 'devoted to religious observances', i. e. whose principal objective is religion; *rjaraḥ*, 'straightforward', i. e. not crooked-minded. (68).

Those, (the number) of whom three is a lower degree are *tryavardāḥ*, 'not less than three'. *Vide* the text of Bṛhaspati: "Nine, seven, or five, should they be; as also four, or three also", Śrauta performance, such as the maintenance of the perpetual fire &c.; a Smṛta performance, such as the performance of the Sandhyā worship and the like; one ever alert on their performance, and performing these every day; *yathājāti*, 'according to caste', i. e. in accordance with the caste; thus the conclusion is that for the *Mārdhārasikṭas*, the *Mārdhārasikṭas*; for the *Ambaśāṭhas*, the *Ambaśāṭhas* to be witnesses; for the women, women to be witnesses.

In the absence of those of one's own caste or of one's own class, in the case of all disputants, all i. e. the *Mārdhārasikṭas* &c., as also Brāhmaṇas &c., who have been stated to be witnesses, in the Smṛtis of Manu and others, should be regarded as proper witnesses. (69).

Women &c., however, are not (proper) witnesses. *Bālaḥ*, 'a minor', one below the age of sixteen; *tyddha*, 'old', more than eighty years of age; *kṛtakaḥ*, 'a rogue', one who habitually gambles with dice; *mattaḥ*, 'intoxicated', by spirituous liquor &c.; *unmattaḥ*, 'violent', such as by madness &c.; *abhisāsto*, 'possessed' i. e. on account of the curse of Brāhmicide &c.; *rangātātārī*, 'a stage-dancer', i. e. an actor; *pākhaṇḍī*, 'a heretic' i. e. one outside the orbit of the Vedic religion; *kūṭakṛt*, 'a forger', one whose dealings are always fraudulent; *sikalendriyaḥ*, 'one deformed', i. e. without an eye, ear &c. (70).

1. Yājñ. II. 22 p. 743 ll. 16-18.

2. Oh. VII. 16.

3. अभिशस्त under an accusation, or under a curse.

4. i. e. not recognising the Vedas as of authority वे वेदस्य प्रामाण्यमेव नैच्छन्ति, सीमान्तरः ।

*Patito*, 'degraded,' such as a Brāhmicide &c.; *āptuḥ*, 'a relation,' 'relative', i. e. a friendly relative; *arīhasambandhi*, 'interested in the subject-matter' i. e. of the subject-matter in dispute; *sahāyaḥ*, 'an ally', i. e. one who is helping the disputant; *ripuḥ*, 'enemy', i. e. enemy of the disputant; *taskaraḥ*, 'a thief', a robber; *sāhasī*, 'a desperado', one who wilfully causes murder &c.; *dṛṣṭādoṣho*, 'one who has been found guilty,' i. e. one who has been found to have told a lie in another litigation; *nirdhātāḥ*, 'an outcaste', i. e. who has been outcasted from the family. By the use of the word *ādya*, 'and like others', are included, the Vedic scholar, the ascetic &c. (71). 5 10

The Author mentions an exception to the rule 'not less than three':—*ubhayānumataḥ*, 'with the consent of both' &c. by both i. e. by the plaintiff and the defendant, agreed to; such a one. *Dharmavit*, 'knowing the dharma', is the necessary attribute in common to all the witnesses. Such a one of this qualification, *chopi*, 'even one,' is a sufficient witness. 15

The Author mentions an exception to the rule stated in 'women, minors etc.'

*Sangrahaṇe*, 'adultery' i. e. adultery with women; theft, *pārūṣhye*, 'insult', such as the abusive insult, defamation; *sāhaso*, 'in a heinous offence,' such as man-slaughter and the like; *sarvāḥ*, 'all', i. e. even women and the rest devoid of the qualifications for a witness as aforesaid, become admissible as witnesses. This is the meaning. 20

By the use of the word *cha*, 'and also', are included persons possessing other qualifications as stated by Manu and others, and as implied in the word *jāneya*, 'should be known'. By the use of the word *tu*, 'however', the author specially marks the incompetency as witnesses of ascetics as distinguished from women and others owing to their not being possessed of the stated qualifications. By the use of the word *npi*, 'even', are included those stated in the text of Bṛhaspati: "Both these learned men in the Vedas may be accepted". Here, the witnesses added by inclusion by the word *et*, 'or', and included by the word *ādya*, 'and like others', are particularly stated as established. There by the efforts of the parties, witnesses mentioned in the lists and as set out in treatises are the best, viz. those working for the benefit of (the members of) all the varṇas, knowing all the laws, unaffected by (motives of) avarice, by habit observing the rule of purity, both external and internal. 25 30 35

In this connection Brh̥aspati<sup>1</sup> says: "A enscribing witness, one  
 canced to be written, a secret witness, one who has been reminded,  
 a member of the family, a messenger, a spontaneous witness, an  
 indirect witness, a stranger who has (accidentally) witnessed the  
 deed (1). The king, the presiding judge, so also the village—thus  
 have the twelve kinds of witnesses been declared. I will now  
 declare their distinctive characteristics precisely in order (2). One  
 by whom his own acts has been written, and by whom his own  
 and the father's name, as also the place of residence has been written,  
 he should be known as a 'enscribing witness,' *Likhitaḥ* (3). One who  
 has been entered by the plaintiff in executing a contract of loan or a like  
 other transaction together with the details of the agreement is called a wit-  
 ness 'canced to be written,' *Lekhitāḥ* (4). He, who being concealed beheld  
 a partition wall is made to listen to the declarations of the debtor, and  
 exposes the falsity of the denial by stating in detail what had happened,  
 is known as 'a secret witness,' *Gadhaḥ* (5). One who after being invited  
 was made a witness in a transaction of loan, deposit, purchase, or the like,  
 and is repeatedly reminded of it, is termed 'a witness reminded'  
*Smṛitaḥ* (6). One by whom in the matter of partition, gift, or sale, the  
 commonly is advised, who is on terms of equality with both parties,  
 and who knows the law, such a one is called 'a family witness,'  
*Kulyaḥ* (7). One who being commissioned, hears the statements of the  
 plaintiff and the defendant, who is approved of both, and is a respectable  
 man, is called a 'messenger witness,' *Dātakaḥ* (8). One who, while a  
 cause is being investigated, appears of his own accord and declares that  
 he has witnessed the transaction is called 'a spontaneous witness,'  
*Yādṛcchikaḥ* (9). A witness who when he is about to go ahead, or  
 is lying on a death-bed, communicates to another what he had heard is  
 called 'an indirect witness,' *Uttarasākṣiḥ*. (10). He is also called 'an  
 indirect witness' who repeats, from his own hearing or from hearsay,  
 the previous statements of actual witnesses (11). One in whom both  
 have placed their trust, or have communicated the business should be  
 known as 'a secret witness,' *Gudhachāri*; as also one who is in the midst  
 of the transaction (12). Where the statements of the plaintiff and the  
 defendant have been heard by the king himself, he himself may become  
 a witness when there is a dispute between the two (13). If after a  
 suit has been decided, a fresh trial should take place, the Chief Judge  
 together with the assessors, may act as witnesses there, but not in any  
 other case (14). Where there has been a damage or destruction of

1. Chapter VII. 1-15.

2. Cf. the *De bene esse* evidence of the present system of procedure.

the boundary line around, in such a case even without being specially appointed, the village may no doubt be a witness (15)".

Without specifying the distinction of a subscribing witness and a witness caused to be written, eleven kinds of witnesses have been mentioned by Nārada.

Now those who are incompetent to give testimony: One learned in the Vedas, a hermit, an ascetic. The enraged, a hunter, a slave, one not having faith in Vaidic rituals, the oilman, the blunderer, the village priest, one eating at one man's place, the wanderer, the cognate, the egnate, one proceeding on a holy pilgrimage, one proceeding on a sea voyage, the 10  
grocer, one defective, one devoid of a regular course of daily conduct, the impotent, the dancer, one directing in a dance, the Vrātya, a deserter of his wife, one who has discarded the (sacred) Fire, one sacrificing for the unsacrificable, one living on poisons, a snake-charmer, the poisoner, the incendiary, the ploughman, the Śūdra, one declared to be unfit, one who 15  
has committed a sin of a lower order, one extremely dejected, one habitually performing acts opposed to the Vedas, one who has cast off his own duty, a twice-born on whom the ceremony of retirement from the preceptor's home is not performed, the dull in intellect, the sesamum-vendor, one causing deceit, one possessed by an evil spirit, a king-hater, 20  
the astrologer, one imprecating curses on others, one with a defective limb, a libertine, one with cracked nails, one whose teeth are rotten, a leper, a treacherous friend, the rogue, the plotter, the sorcerer, the covetous, one fierce in action, one opposed to the *S'trenis*, and *Ganas*, the idol-maker, one begging by making the bull perform, one inventing false 25  
religions and rules of conduct, an apostated ascetic, the royal personage, the seller of the flesh and houses of men and beasts, and of honey, milk, water, ghee and also of the Vedas; the nurse, one engaged in undertaking causing dissensions, the villain, a low servant, one engaged in a dispute with his father, and one causing mutual dissension. 30

There Nārada says: "The incompetent witnesses also have in the law-books been declared by wise men to be of five sorts, viz., (1) under a text, on account of (2) depravity, (3) of contradiction, (4) of a voluntary statement, and (5) of intervening disease (157). The *S'trotiyas* and the like, on account of a text; the thieves and the like, on account of depravity; 35  
and on account of contradiction, where in a suit there is mutual inconsistency among the witnesses. If among the witnesses summoned by the king in an investigation of a cause the statements differ, these are rendered incompetent on account of contradiction (160). A volunteering

witness is one who without being appointed comes of his own will and speaks (161), and a witness on account of an intervening death is one when the plaintiff is dead without his being affirmed."

The S'rotriyas and the like who owing to their intensive application to the Vedic study being likely to be forgetful about the facts of the cause in dispute, they should not be made witnesses. If not made, but if they know, they certainly become good witnesses. So it has been said "Both these S'rotriyas should be accepted."

He further elaborates the S'rotriyas, etc.: "The S'rotriyas, devotees, aged persons, and these men who have become ascetics, these are declared as incompetent witnesses under a text, here no reason has been given" (158).

If a creditor while in anticipation of impending death has stated to his relations that such and such a person knows that a debtor truly owes the amount, such a one becomes an admissible witness even with an intervening death. When the creditor is dead, and his sons being ignorant, a case had not been put forth, for the reason, "Who may the witness be"?, thus one is an incompetent witness on account of intervening death. Here in the absence of a competent witness, an incompetent, or a prohibited one may be accepted. It should be remembered, however, that one who has emphatically been prohibited, must never be admitted. This is as good as said. (72).

### S'ūlapāṇi.

'Not less than three shall be the witnesses'. To this 'the Author states an exception

### Yājñavalkya, Verse 72.

One conversant with the Dharma, and approved of both (sides), may be admitted as a proper witness though alone, by reason of the special qualifications. It is not merely by a knowledge of the Dharma, nor also because both the parties consent, that only one (man) is admissible as a witness.

Thus: "Where a witness pure in action, knowing the Dharma, whose testimony has been tested, even one may be accepted as good evidence, and particularly in cases of heinous offences," so characterised in the text of Vyāsa<sup>1</sup> by reason of his being agreed to by both the parties, by reason of the veracity of his speech, although he had not given

<sup>1</sup>. See also Smṛtichandrikā p. 76. l. 18.



evidence in other cases before, and thus although prohibited (on that account), becomes admissible as a proper witness.

Nārada<sup>1</sup>: "Those who have been set out as incompetent witnesses viz., slaves, imposters and like others, shall still be witnesses when the importance<sup>2</sup> of the trial is determined<sup>3</sup>." Even here these are not all 5  
admissible: "Even among them, not a minor, nor a woman, nor one alone, nor a cheat, nor a relation, nor an enemy; as they might depose falsely".

Indeed: In the text of Nārada<sup>4</sup>: "Man-slaughter, theft, an indescendent assault on another man's wife, and the two species of insult, 10  
are the five kinds of heinous offences", the adultery with women is included in the statement of *Sahasas*—heinous offences—why then has it been separately mentioned? The answer is, under the text of Manu<sup>5</sup>: "That act will also be called a *sahasas*, which has been perpetrated violently and which has the resulting consequences", with a view 15  
to obviate the doubt about the heinous character of a violent act referred to in the text, a separate mention has thus a purpose. (72).

The Author describes the affirmation of the witnesses

Yājñavalkya, Verse 73, (1)

In the presence of the plaintiff and the defendant 20  
the witnesses should be affirmed, (in the following<sup>6</sup> form)

Mitākṣharā:—In the presence of the plaintiff and the defendant, Sākṣināḥ, the witnesses, when gathered together—under the text of Gautama<sup>7</sup>: "They (i. e. the witnesses) should not speak singly or without<sup>8</sup> being asked," should be affirmed, 25  
s'rāvayet, as follows. There also a special rule has been laid down by Kātyāyana<sup>9</sup>: "The witnesses being assembled in the middle of the court room, in the presence of the plaintiff and the defendant, the judge

1. Oh. I. 188.

2. i. e. in important proceedings even these may become witnesses.

3. Nārada Oh. I, 190.

4. Oh. XIV. 2.

5. Ch. VIII. 333. See the comment of Mādhatīti on this verse.

6. viz. verses 73 (2), 74, 75, further on.

7. Oh. XIII. 5.

8. There is a mistake in the print at p. 46, l. 17. for 'नासमवेताः'—read

नासमवेताः ।

9. Verses 342, 344, 345.

should examine them after assevering them in the manner as laid down in the following rule (342): "In the forenoon, the judge, being purified, should charge the *dvijās*, their faces being turned towards the North or the East, to give true evidence, in the presence of (the image of) God and the *Brāhmaṇas* (344). After having summoned the witnesses and bound them down firmly by an oath, he (the judge) should examine them severally, (all of them) being men of established character and acquainted with the facts (of the case) in dispute (345)."

Moreover, a rule has been laid down by MANU<sup>1</sup> for affirming the *Brāhmaṇas* and others: "A *Brāhmaṇa* should be required to swear by the (merits generated by his) truth, a *Kṣatriya* by (the means of) his conveyance and by his weapons, a *Vaiśya* by his kine, grain, and gold, and a *S'ūdra* by (imprecating on his own head the guilt of) all sins". A *Brāhmaṇa* should be made to swear with the words—"If you tell an untruth, all (merits arising from) your truth will perish"; a *Kṣatriya*—"Your (means of) conveyance and weapons will become futile"; a *Vaiśya*—"your kine, grain and gold will become useless", and a *S'ūdra*—"if you tell an untruth all the sins will accrue to you".

Here, moreover, an exception has been mentioned by the same Sage: "The *Viprās* who carry on the business of cowherds, traders, similarly of mechanics, actors, and also menial servants, or usurers, the judge should treat as *S'ūdras*". The use of the term *Vipra* is by an extension, indicative, of *Kṣatriya* and *Vaiśya*. *Actors* (*Kuśilavāḥ*) i. e. singers.

When (the plea of) a defect in a witness has been raised by the defendant, the decision should be arrived at in the same manner as is done in the case of defects which are capable of being determined upon by actual sight, such as minority &c. In the case, however, of such as are not capable of being so determined, the point should be decided by reference to the evidence of witnesses and the evidence of general repute, and not by that of other witnesses; thus there is no incongruity.

If the defendant, after having set up a defect in the witnesses, is not able to substantiate it, then he  
 \* Page 47. should be punished according to the nature of the defect set up. If, however, he establishes the defect, then those persons will not be admitted as witnesses. As has been said<sup>1</sup>: "If he (*i. e.* the defendant) do not establish clearly the defect in the witnesses, he should be compelled to pay a fine; if the defect is established, the witnesses should be rejected as persons unfit to be witnesses". 5

And when after all the witnesses intended to be cited by the plaintiff have been found to be defective, and the plaintiff cannot prove his case by (any) other evidence, then he becomes defeated; *vide* the text.<sup>2</sup>—"When defeated, he should be compelled to pay a fine as laid down by the law, if the plaintiff is disposed to be indifferent in (the matter of) establishing the truthfulness of his witnesses." The meaning is that if he is desirous (of establishing his case), he should have recourse to other evidence. 10 15

How should a witness be affirmed? as the Author explains

Yājñavalkya, Verses 73 (2), 74, 75.

"Those regions (which are) meant for the perpetrators of sins and of baser<sup>3</sup> sins, as also those worlds (which are) meant for the incendiaries and the slayers of women and children, to all these shall he go who gives false evidence. 73 (2), 74. 20

"Whatever merit you have secured by (your good deeds in) hundreds of previous lives, know that all that (merit) will be his whose defeat you will bring about (by speaking) falsely. 75. 25

Mītākṣharā:—The meaning is that those regions which are intended for the perpetrators of sins, accessory and baser ones, as also for the incendiaries and the murderers of women and children, to 30

1. By Vyāsa.

2. Also of Vyāsa.

3. महापातकाः, these are.

महापातकाः सुपातकं स्वेयं पूर्वगतमपि । महोपापात्काम्यादुत्तरांतर्गतं च पञ्चमम् ॥

- all these shall he go who gives false evidence. Similarly, whatever merit may have been acquired through hundreds of previous births, all that goes to him who is defeated on account of your (having given) false evidence; thus a witness should be affirmed, is the connection.

- This (latter), moreover, should be understood as applicable to S'ūdrās, as the affirmation by all the sins as laid down in the text—"and a S'ūdra by all the *pātakās*"—has also been made applicable to the *dwijas* who carry on the occupation of cowherds &c. as has been laid down in the text: "(*dwijās*) engaging themselves as cowherds, grocers &c." The transference to another of the merit acquired through innumerable births, as also the accrual of the results of baser and other sins is not deducible from untruth alone. Thus this text is intended merely as a means of inspiring awe and fear (in the defendant); as says Nārada: "By ancient sacred texts, extolling the excellence of truth, and denouncing the sinfulness of falsehood, let him inspire them with deep awe".

### Viramitrodaya.

- Now the Author states the manner, in which witnesses should be examined

#### Yājñavalkya, Verses 73, 74, 75.

Those attending for giving evidence as witnesses and in the presence of the plaintiff and the defendant, the investigating officer himself should affirm in the manner hereafter to be stated.

- Pāpakṛtām*, 'for the perpetration of sins', are meant here the regions (intended) for the perpetrators of sins not specifically mentioned viz. such as the *Raurava* and the like other places. *Agnidāndm*, 'for the incendiaries', i. e. who set fire through hatred to fields full of crops, to a store-house, and the like places; *śākhyam*, 'evidence' i. e. statement to be made as a witness; *anytam*, 'false' i. e. not according to facts, *yo vadet*, he 'who states', *sa etān sarvān*, 'he all these regions', *avāpnotti*, 'shall go to'.

By the use of the word *tathā*, 'also', the perpetrators of the lower kinds of sins, and by the several use of the word *cha*, 'and', are included

1. Manu ch. VIII, 118.

2. Manu ch. VIII, 102.

3. Ch. I, 200.

the perpetrators of grave offences, such as, the poisoner, one causing abortion, and the like.

By reason of the text: "While a *śūdra*, by (the imprecation of) all the *śins*", in regard to the affirmation of a *śūdra* witness, the Author enys; *śukṛtmīti*, 'merit etc'. The meaning is that whatever religious merit you may have acquired in past births, all that shall perish. 5  
Nārada: "By the truth, should a Brāhmaṇa be affirmed; a Kṣatriya by the means of his conveyance and weapons; by the kine, grain, and gold, a Vaiśya, and a Śūdra by all the *śins*".

"Speak the truth", thus no affirmation should be caused to be made 10  
by a Brāhmaṇa, in the form of wealth, viz. 'this is the truth'. This, however, is in regard to a Brāhmaṇa for whom a middle course is admissible *vide* the text of Gautama: "Some (declare, that the witnesses) shall be charged on oath to speak the truth. That in the presence of Gods, Brāhmaṇa, and the Royal Court, in the case of others than Brāhmaṇa". 15  
'By one' is in regard to the specially qualified.

Vāhanam, 'means of conveyance', such as the horse, etc.; *dyudham*, 'weapon', such as the sword, etc. The affirmation should be made in the form of a touch of these. By the touch of the cow or the grain which are the main support of agriculture, and of gold, the Vaiśya 20  
should be affirmed. By the text, (of Nārada), 'A Śūdra &c. and *S'ukṛtam* etc., religious merits' when the judge causes the affirmation, the party should be made to repeat this 'all the *śins* shall accrue to me if I make a false statement.'

By the use of the word *tu*, 'however', are excluded the affirmations of the members of *three varṇas*: 'Speak', thus, should be 25  
next the Brāhmaṇa, 'speak the truth', thus a Kṣatriya". So also: "Those of the Vipras who carry on the business of cowherds, traders, also the mechanics, and actors, menial servants, and usurers—the Judge should treat as *S'ūdras*". "Treat as *S'ūdras*", i.e., should 30  
cause affirmation to be made like the *S'ūdras*. In the case of Kṣatriyas, the rule should be understood by discriminating between men of quality and those without any qualification.

1. of Manu Ch. VIII. 113.

2. Ch. I. 199; See also Manu Ch. VIII. 113.

3. Ch. XIII. 12, 13.

4. एकेनेति—Here Mitramisra reads the text of Gautama (XIII. 12) as सत्येनेकेन—while in the original it is सत्येनेके—'according to some, by the truth'.

5. viz. the Brāhmaṇa, Kṣatriya and Vaiśya.

6. Ch. VIII. 89.

7. Ch. VIII. 103.

**Mitākṣharā** :—He, who having agreed to give evidence as a witness, after having been affirmed, does not

On a refusal to depose anything, should be made to pay by the king the entire debt (i. e.) together with interest, debt should be to the creditor, *sadasābandhakam*, with the addition of a tenth, i. e. together with a tenth part. 5

The tenth part, moreover, becomes the king's property, for it has (already) been laid down above that "a debtor should be made to (pay) by the king to himself ten per cent of the amount recovered." 10

This (rule), however, should be understood to be enforceable after the 46th day is reached. One deposing before that limit should not be made to pay.

This rule, again, applies to those who are not affected by any of the calamities, such as a disease &c. As says **Manu**<sup>2</sup>: "A man who, without being ill, does not give evidence in cases of loan transactions and the like within three fortnights shall become responsible for the whole debt together with a tenth part of the whole." *Without being ill* is indicative by implication (also) of the absence of (other) calamities caused by the king or fate. 15 20

### S'ūlapāṇi.

#### Yājñavalkya, Verse 76.

Those, moreover, who after being put to an oath viz.: "these regions for the sinners &c.", do not give evidence, after an interval of three fortnights they should be compelled by the king to pay the amount of the debt together with interest, and a tenth part in addition. The addition of the tenth part being by way of penalty, the king should take (it to) himself. **Manu**<sup>3</sup> states a special rule: "He, to whom, within seven days of his having given evidence, happens (a calamity in the form of) a sickness, a fire, also of the death of a relative, shall be made to pay the debt and a fine." 25 30

1. Yājñ, II. 42. p. 779 ll. 25-26 above.

2. Ch. VIII. 107.

3. Ch. VIII. 109.

- Also: "When a plaintiff after having agreed to attend for performing an ordeal, does not attend, in such a case the fraud should not be allowed when any calamity, either caused by God or the King occurs to him. By merely giving up the period he does not become defeated".
- 5 'Should not be allowed' i. e. should be dispelled. Here, according to some, the use of the word *hāni*, 'loss' before the word *parājitaḥ*, 'defeated' is in the sense of a defeat. In the suit, a fraud being liable to be dispelled, there cannot be a defeat merely on account of the statements, for a fault may likely be found even in the witnesses cited.
- 10 While in the case of statements the suspicion would be of a slight degree. So hold others. (76-77).

## S'ūlapāṇi.

## Yājñavalkya, Verse 77.

- He, who though knowing (the facts), through wickedness does not appear and attend, he should be regarded as equal to a false witness in guilt with the sins and penalties. *Kātyāyana* says in regard to false witnesses: "A false witness shall stay in the *orichā*<sup>1</sup> hell for a year". (77)

How should the decision be given when the witnesses disagree?  
So the Author says

## 20 Yājñavalkya, Verse 78.

- In (the case of) a disagreement, the testimony of the majority prevails; similarly if the witnesses are equally divided, the evidence of the virtuous; if, however, the virtuous disagree, the evidence of those who are most virtuous
- 25 should be accepted (as conclusive).

- Mitākṣharā* :—*Dwaidhe*, in the case of a disagreement, i. e. conflict between witnesses, *bahūnām vachanam* Rule in the the testimony of the majority, *grāhyam*, should be case of a conflict accepted. When the disagreement is between
- 30 among witnesses. those who are equal i. e. equal in number, the testimony of those who are virtuous should be accepted. When, moreover, the disagreement happens to be even

1. अरिची—the name of a particular hell; a waveless stagnant cesspool  
See Yajñ, III. ११. 224.

among the virtuous, those who are *guṇavattamāḥ*, most virtuous, i. e. accomplished by learning and study and by the observance thereof; as also who are endowed with wealth, male issue &c. The testimony of these should be accepted.

Where, however, the virtuous are few and the others many, the testimony of the virtuous alone should be accepted *vide* the text<sup>1</sup>,  
 "With the consent of both, even one person is (enough as) a witness, if he knows the *Dharma*," prominence having been given to the superiority of virtues. What, however, has been said about the incompetency of persons on account of a contradiction, applies to a case where no special preference can be admitted on account of the general equality of all. 5 10

### Viramitrodaya.

Now the procedure regarding the statements of witnesses.

There *Kātyāyana*<sup>2</sup> says: "The witnesses should give their evidence while within the Court premises, and not elsewhere; this is the rule in regard to all kinds of witness evidence; but it is otherwise as regards immoveable property". In the case of the killing of sentient beings, the witnesses should be examined near the corpse; in its absence, near a mark (of the corpse); in no other manner should he be examined. With an unperturbed mind, whatever and whenever he may have seen with his own eyes, and which has been remembered (by him), that a witness should state in his deposition. So also, "Where, in the case of defendants belonging to a foreign country, their presence is unascertainable, in such a case a written statement of his deposition, made before Scholars of the three Vedas should be caused to be taken." 15 20 25

*Kātyāyana*: "What was seen by persons together, that should be stated as it was; where it was separately seen in different transactions, that should be deposed to separately. Where a transaction came to be known by the witnesses at different times, there each separately should 30

1. *Yājñ.* II. 72 above p. 812. II. 22-24.

2. Verse, 380.

3. शिवसंनिधौ—Mr. Kane in his compilation of extracts from *Kātyāyana* has preferred the reading as शिवसंनिधौ. But शिवसंनिधौ is better, and appropriate to c.

4. Verses 394-395.



be examined at a different time; as says Bhṛgu". 'Not one transaction' means different transactions. 80<sup>1</sup>: "Their statements as made naturally should be accepted free from faults; when the witnesses have made their statements they must not be questioned by the king again and again."

- 5 What should be done when a disagreement occurs in the statements of witnesses examined? So the Author says

### Yājñavalkya, Verse 78.

- Of the witnesses, whether examined by one side *e.g.*, by the plaintiff, or examined on behalf of both sides, where there is 'a disagreement',  
 10 *dvaiddhe*, *i.e.* where their statements contradict each other, *bahūdām*, 'of the majority' *i.e.*, as compared with the opposite testimony of a larger number of witnesses, the statements of witnesses should be accepted. Where the witnesses are men with qualifications and of equal number on both sides, there by a comparison with the contradicting statements, those  
 15 who have higher qualifications, their statements should be accepted.

- By the use of the word *tu*, 'however', is excluded the admissibility of statements which are opposed to the admissible testimony. Where, on a difference of the evidence of the contending parties, there is an absolute equality then by the rule stated in the text<sup>2</sup>: "When three witnesses  
 20 for both sides" &c. an adjustment has been made before.

Of one's own witnesses if there be mutual contradiction, or an entire agreement, then according to the opinion of Miśra, another kind of evidence should be resorted to.

- Now, come under the text of Kātyāyana *viz.*: "Of the subscribing  
 25 witnesses who have been pointed out by the plaintiff, even if one depose falsely, all become incompetent witnesses on account of an incongruity." Others say that the purport of the text of Kātyāyana is that of the three when one speaks a falsehood, another who is equal to him and deposing correctly, and the third being left alone, there a decision cannot be  
 30 reached through witness evidence, while the purport of the present text is that as the remaining witnesses on the other side are more than one, the decision can be reached from their evidence itself. (78).

1. Verse 393.

2. Yājñ. II. 17; see p. 696. l. 18.

## S'ulapāṇi.

## Yājñavalkya, Verse 78.

When there is a conflict among witnesses, the testimony of the majority should be accepted. When the witnesses are equally divided, the statements of those with better qualifications should be accepted. And if it is the case with all, the statements of the best qualified should be taken as decisive. (78).

What testimony of the witnesses leads to success and what to a defeat? (Anticipating this inquiry) the Author says

## Yājñavalkya, Verse 79.

He, whose witnesses depose to the truth of (the allegations in) the plaint, shall become successful; (and) sure defeat will be his whose witnesses speak to a falsehood.

Mitākṣharā:—yasya, he whose, i. e. of the plaintiff, pratijñām, plaint, containing the particulars about the subject-matter, its kind, measure &c., sākṣhiṇaḥ, the witnesses, depose to satyām, as true, e. g. with the words. "This is true, we know", becomes jayi, successful.

Of a plaintiff, however, whose plaint, anyathā, they contradict i. e. testify in a contradictory manner e. g. (with the words). 'This is false' his defeat, parājayah, will be sure, dhruvaḥ i. e. certain. Where, however, on account of forgetfulness or other (cause) the witnesses do not substantiate either the affirmation or the negation of the allegations in the plaint, in such a case the decision should be given by (recourse to) other (means of) proof; and the king should not question the witnesses again and again. Only such testimony should be recorded as was given (by the witnesses) spontaneously. As has been said<sup>1</sup>: "Such evidence of these (the witnesses) should be admitted as may be spontaneous and free from fault; after, however, the witnesses have made their declarations as above, they should not be questioned again and again by the king".

1. By Kātyāyana verse, 392.

## Vīramitrodaya.

Now the Author mentions the kind of evidence which leads to a success or a defeat

## Yājñavalkya, Verse 79.

- 5      *Yasya*, 'whose', i. e. of the plaintiff, *pratijñam*, 'plaint',  
       *sākṣīṇaḥ*, 'the witnesses', *satyaṁ bravyuḥ*, 'depose to the truth', i. e. speak  
       according to the facts, *sa*, 'he', i. e., the plaintiff, *jayaḥ bhavet*, 'shall  
       become successful'. *Anyathā vā dīnaḥ*, 'apart from a falsehood', i. e., those  
       who depose to the falsity of the plaint, *yasya*, 'whose' witnesses, *asya*,  
 10 'of him', *dhruvam*, 'sure', i. e., of a certainty, is *parājayah*, 'a defeat'.  
       This is the meaning.

- Some, however, say that the witnesses, i. e., of the plaintiff who do  
       not depose to the truth (of the plaint); that is improper. In a trial  
       at law, all evasions are to be removed, and by merely non-deposing,  
 15 a defeat would be impossible; that is the point.

- Here, even as to a matter deposed to by the witnesses, if within  
       seven days a disease or a like calamity occurs to him, the party whose  
       witnesses depose, gets a defeat—*vide* the text of Nārada<sup>1</sup>, viz.: "He,  
       to whom, within seven days of his witnesses having given evidence,  
 20 happens (a calamity in the form of) a sickness, a fire, or the death of  
       a relative, shall he made to pay the debt, and a fine also."

- In regard to the statement of witnesses Vyāsa says: "If the  
       statement (of a witness) is not defective in regard to time, form, age, the  
       thing, country and the caste, the point at issue may be declared as  
 25 established." Bṛhaspati<sup>2</sup>: "He, the statement in whose plaint has  
       been entirely deposed to by the witnesses, that man will be (declared)  
       successful; if otherwise, witness evidence will not lead to a conclusion."

- 'If otherwise', i. e., in the absence of deposing to the entirety.  
       This, however, is possible in two ways, by not deposing, as also by not  
       deposing as expected. Another (possibility) is also of four kinds, by  
 30 deposing to less, by deposing to more, by deposing to one's ignorance,  
       as also by deposing to the opponent's case. There, in all the cases, the  
       point at issue remains unestablished. On the other hand, in the case of  
       the first and the last, other means of evidence must be resorted to, and  
 35 not that by that much alone there could be a decision as to its defeat.

Now the statements of witnesses: Thus Nārada<sup>3</sup>: "When in  
       regard to the matters set out, a witness who has come to depose does not

1. See Manu Ch. VIII. 109.

2. Ch. VII. 32.

3. Ch. I. 232.

depose consistently and without a flaw, that cannot be regarded as evidence." Some say that where he deposes as to the thing, but fails in regard to the portion as to the quantity, there in regard to the portion of the quantity, other evidence should be resorted to. According to the Sampradāya, other evidence may be taken even (if it be) in regard to a portion of the thing. 5

For, "where a party's witnesses depose to less or even more, that even may be regarded as non-evidence; this has been declared to be the rule as to witness evidence". When a hundred is in dispute, a statement as to two hundred, leading to a certainty of falsehood, is as good as not said. It is not possible in the case of a plaintiff, by reason of constant company and repetition, that his witnesses who are (thus) reminded, should forget. In the case of a statement as to fifty, in regard to more than that, it is as good as not said. In regard to the portion deposed to, however, it is certainly decisive, so opines the revered Mīśra. The (author of the) Smṛtisāra, and others, however, hold that in regard to the entire claim even, there should be other evidence. 10 15

Where 'a witness who has heard', however, when asked says "I did not hear this matter", there the point is not established, there being an absence of a concurrence between the (words of the) deposition and the matter in issue. On the other hand, like an eye-witness, where a witness deposes to the very matter at issue from what he had heard, there the claim becomes established. In the case, however, of a taint as to the unreliability of his words, he certainly does not deserve to be admitted as a witness. This is the meaning. (79). 20 25

### Sūlapāṇi.

#### Yājñavalkya, Verse 79.

He, the substance of whose claim, his witnesses support and declare 'this is true', that man shall be (declared) successful. He whose witnesses speak otherwise, his defeat is certain; *vide* the text of Vyāsa: "A false claimant is defeated". So Nārada: "Regarding the place, time, age, subject-matter, quantity, shape and kind, where there is incongruity, that witness evidence is also worthless". (79). 30

The Author mentions an exception to the rule<sup>2</sup>: "sure defeat will be his whose witnesses contradict the claim." 35

1. Ch. V. 175.

2. Contained in the last verse No. 79. p. 871.

## Yājñavalkya, Verse 80.

Even after evidence has been given by witnesses in the matter under consideration, if more qualified witnesses, or double (than those first examined) depose otherwise, the first witnesses become false.

Mitākṣhārā :—When evidence has been given by witnesses, sākṣhibhiḥ, qualified as (stated) above, sākṣhye, Exception in the matter under consideration, i. e., the to the above. allegations made by himself (and) which is 10 contradictory to the allegations in the plaint, yadyanye guṇavattamāḥ, if others more qualified, than the first, dwiguṇā wā, or double in number, depose otherwise, anyathā: i. e., in support of the allegations in the plaint, then the first witnesses, pūrvasākṣhinaḥ, become false, kūtāḥ i. e., perjurers.

Indeed this is improper. For, after the evidence was given by witnesses who were fixed upon as the means of An objection, proper proof after their competency was determined by the plaintiff, the defendant, and the presiding officer of the court, to seek after another mode of proof would 20 involve the fault of incongruity as also per the text of Nārada: "When a lawsuit has been decided, evidence becomes useless, whether it consists of documents or of witnesses, if such \* PAGE 49. evidence was not announced at a former stage of the trial. As the (fertilizing) capacity of the rainy 25 season is thrown away on crops which have ripened, even so evidence becomes useless in suits which have been decided.

To this the answer is: when the plaintiff relying on his own internal consciousness about (the truth of) the The answer. allegations in the plaint, and thus regarding as 30 unreliable the testimony of witnesses who although till then are undiscovered as vicious, yet as it contradicted the plaint, he conceives a defect even in (his own) witnesses, then in such a case, how can other evidence be excluded? It has also been

said<sup>1</sup>: "He whose sense of perception is faulty, as also he who has been once found to have told a lie, that man indeed is a bad witness" *e. g.* although a defect in an organ such as the eye &c. has not been (actually) discovered, still as such a defect in the organ is (still) inferred on the strength of the knowledge thereof by the disagreement with the plaint, so here also on the strength of the rule that the evidence of witnesses should be tested by means other than the mere examination of witnesses, Kātyāyana<sup>2</sup> has said "The truth of the words uttered by witnesses should be examined with the help of the Councillors."

"When evidence is free from (all) faults then (alone) their words should be tested by the principles of justice; and a plaint which has been found to be correct by comparison with testimony (so) refined, is considered as a true plaint; this is the (established) rule<sup>3</sup>." When Evidence in the form of witnesses is (found to be) free from all faults by reference to the rule<sup>4</sup> "nor those interested in the suit, nor friends &c." then (only) *their words i. e.* the words of the witnesses<sup>5</sup> should be tested. And the testing of the words is to be by establishing the truth of the plaint, *vide* the text: "A clause is refined by (establishing its) truth." From the evidence thus refined, and from the words thus tested whichever (allegation in the) plaint<sup>6</sup> is established, that is considered as a true plaint having been found as such. This is the rule, *i. e.* the rule of the lawyers. The meaning is that the evidence is considered as true in the absence of any data for inferring a fault in the senses (of perception).

1. By Gautama (see Bālabhāṭṭi); or it may also mean, 'he whose evidence is faulty'. Viṣṇūśeṣara, however, takes it to mean 'an organ of perception.'

2. Verse, 340.

3. Kātyāyana verse. 403.

4. *i. e.* new witnesses.

5. Narada ch. I. 177. The full text of this rule is as follows:

नारदमुच्यते नाना न सहाय न वैरिणः । न दृष्टदोषाः प्रहत्याः सखिणः प्रदिग्विदाः ॥ १७७ ॥

Tr: "Those must not be examined as witnesses who are interested in the suit, nor friends, nor associates, nor enemies, nor notorious offenders, nor persons tainted (with a heavy sin)".

6. *i. e.* Witnesses first examined.

7. *Lit.* when once success in the case has been declared

After having discussed the witnesses cited as evidence by the plaintiff himself, how can other evidence be accepted as proof? There is no error here. Since by mentioning the rule: "He, who having

- adduced stronger proof resorts to a weaker one.  
 5 Another objection should not be allowed by the officers of the court and answer to resort to it again when once the case has been determined", Kātyāyana<sup>1</sup> has indicated the admission of another proof before yet the success in the case is determined, since fresh evidence is prohibited at a period subsequent  
 10 to the determination of success in a case. By stating the rule<sup>2</sup>: "When a lawsuit has once been decided, evidence becomes useless", Nārada also has interdicted fresh evidence only after the determination of the success in a suit and not even before. Therefore it has been established that fresh evidence may be admitted on behalf of a party  
 15 who is dissatisfied with his evidence even after 'evidence was given' by witnesses.

- In such a state of things if there are witnesses who are more qualified than, or are twice in number to, those whose evidence was recorded, or if those cited before are not near (and available) then (the  
 20 testimony of) these latter alone should be accepted as reliable evidence, the rule contained in the text<sup>3</sup>: "Whatever witnesses declare quite naturally, that must be received as evidence acceptable in trials", having a universal application in all suits. Also *vide* the text of Nārada<sup>4</sup>: "When a lawsuit has been decided, evidence becomes useless whether  
 25 it consist of a document or witnesses, unless it was announced at a former stage of the trial". If, however, those who had been indicated at the earlier stage are not likely to be available, witnesses of a like description should be accepted even though they were not mentioned before, and not an ordeal, *vide* the text<sup>5</sup>: "When witnesses are  
 30 available a wise man should avoid divine evidence." In the absence of these an ordeal may be admitted as evidence. After this the plaintiff must not be allowed to adduce fresh evidence even though he be dissatisfied, as *per* the text of Manu, but the trial should be concluded.

1. Verse. 221.

3. Of Manu Ch. VIII, 79.

5. Of Manu,

2. Ch. I, 62.

4. Ch. I, 62.

Where, however, the defendant, regarding the witnesses to be faulty on account of their disagreement with his own internal consciousness, is dissatisfied with the witnesses, in such a case there being no scope for a defendant to adduce evidence, the (veracity of) witnesses should be tested by the occurrence of any calamity, either on account of the King or Fate, within the interval of seven days. In such a case, moreover, if they are found to be vicious they should be made to pay the amount of the loan in dispute, and should also be punished, having regard to the amount of the claim in dispute. If, however, no fault is found, the defendant should rest satisfied with that much, as says *Manu*<sup>1</sup>: "He, to whom, within seven days of his witnesses having given evidence, happens (a calamity in the form of) a sickness, a fire, or the death of a relative, shall be made to pay the debt and a fine also". This, moreover, should be observed as an exception to the rule<sup>2</sup> "He whose witnesses depose to the truth of a plaint shall be successful" in reference to the defendants.

Some explain the text "even after witnesses have given evidence &c." as meaning that, after the witnesses cited by the plaintiff had deposed favourably to the plaintiff, if the defendant by means of more virtuous or a double number of

\* Page 50. witnesses establishes the opposite of what was said by the first witnesses, then the witnesses of the plaintiff come to be considered as false. This is wrong; because it would be improper for a defendant (to be called upon) to adduce evidence. Because, a plaintiff is he who affirms a point (which is) to be proved; (and) his opponent, who affirms the *negation* thereof is the defendant. Here, therefore, the (necessity of the) proof of the *negation* having a dependence relative upon the proof of the *affirmation*, while (the proof of) an *affirmation* being independent of that of a *negation*, it is proper that the affirmation should be (considered as) the *Sādhyā*<sup>3</sup>; by its very nature a *negation* is

1. *Manu* Ch. VIII. 109.

2. Of *Yājñavalkya* II. 79, p. 871.

3. Lit. that which is to be established;—a point to be proved. The meaning is that the burden of proof lies upon him who asserts that a certain thing exists. This is in a line with the first elementary principle of the Burden of proof: cf. Section 101-104 of the Indian Evidence Act.



impossible to be ascertained by witnesses and other (means of proof), and hence it is proper that the burden should lie upon the plaintiff alone.

Moreover, it is a universal rule that the burden of proof is regulated in accordance with (the nature of) the answer: "When *res judicata* and 'special exception' are set up as a combined plea, the defendant should exhibit proof; in (the case of) the plea of denial, the plaintiff (should exhibit it) In the case of an admission, however, it does not become necessary (at all)." Never, however, will the burden lie on both in the same trial, *vide* the text: "To one suit the burden of proof cannot lie on two litigants". Therefore the suggestion<sup>1</sup> that defendant's witnesses should (be allowed to) testify when they are more qualified or double, (in number) is improper.

It may be said again<sup>2</sup> (granting all this) where two persons both coming as plaintiffs, each saying 'I got this as inheritance from a (deceased) relative' 'I got this as inheritance from a (deceased) relative', without having ascertained the priority (of their claim) as to the point of time, in such a case when there are witnesses on both sides, a question might arise as to whose witnesses should be accepted, having regard to the text: "When two persons quarrel for a point, and both have witnesses, the witnesses of him who sets up a prior claim should be heard", the rule deducible would be that the witnesses should be examined for him who first appears<sup>3</sup> as a complainant? And the procedure (contained in the text) "Even after witnesses have given evidence &c." is intended as an exception to it. And therefore when (in such

1. Of Kātyāyana verse, 190.

2. *viz.* as to the meaning of this text of Yājñavalkya.

3. It may be noticed that this objection is raised after the refutation of the last objection, by reference to the text न चैकस्मिन्निपादे &c. The objector says—admitting this to be correct, what if both the litigants are placed in the position of a plaintiff? In such a case, he maintains that this text should apply; but this too has been refuted in the end by Vijñāneśvara.

4. Of Nārada I. 163.

5. Mark the gloss of वाञ्छन्ती 'प्रतिपूर्वत्वाभावेऽपि निवेदनपूर्वत्वाभावेन तत्र निर्णयः इति'

a case) the witnesses of both the prior and the second complainant are equal in merit and number, the witnesses of the first complainant alone should be examined; where, however, the witnesses for the later complainant are more meritorious or are double in number, then the witnesses for the defendant should be examined. And thus there would be no necessity for making a *negation* a *sādhya*, as both parties here set up an affirmative case, and as also the answer is of a kind different from the four varieties<sup>1</sup> of an answer, and thus there is no (necessity for the) adjustment<sup>2</sup> of the burden of proof. And as even according to the *Siddhāntin* the same plaintiff may be put to a double proof in the same trial, so there would be no contradiction in the plaintiff and the defendant being put to two proofs<sup>3</sup> (respectively).

(To this the answer is):—Even this the great teacher<sup>4</sup> does not admit. Such an import is not obtainable either from the express or implied meaning of the term *even* (*api*) in the text: “Even after the witnesses have given evidence.” So enough of prolixity.

### Viramitrodaya

Of the witness who have arrived simultaneously, on a contradiction among them, the rule as to the greater or less potentiality of these has been stated. Now the Author states the rule when they appear separately

### Yājñavalkya, Verse 80.

*Sākṣībhiḥ sākṣya uktepi*, ‘even when evidence has been given by witnesses’, and as compared with these witnesses, better qualified as mentioned before, *anye*, ‘others’, of equal number, or also double the number, *i. e.*, witnesses, if *anyathā*, ‘otherwise’ *i. e.*, contradictory to the witnesses examined before, *brāyuh*, ‘should depose’, then, *purasākṣināḥ*, ‘the first witnesses’, *Kāḍaḥ*, ‘false’ *i. e.*, false deponents, *ayuh*, ‘become’. By the use of the word *etā*, ‘nr’, in the case of casual witness, preponderance in number has been properly adjusted.

1. See p. 661. lines. 17–19.

2. Cf. विद्वत्तया See note 4 on p. 703 above.

3. Here ends the objection.

4. आचार्य *i. e.* विष्णुपाचार्य.

This, however, before the decision is reached. "When having abandoned strong evidence, one resorts to weak one, he should not again be allowed to resort to that evidence when the members of the Court have come to a decision as to the success (in the proceeding)",  
5 this text of Kātyāyana<sup>1</sup> having an application after the (result as to the) success. The weakness of the evidence being expressed by the word *tyakṣa*, 'having abandoned', as indicative of a deliberate abandonment, points to the weakness also of the evidence indicated before, and so is the prohibition. (80).

10 S'ūlapāṇi.

Yājñavalkya, Verse 80.

After the witnesses have given evidence, if those superior in number or with higher qualifications depose to the contrary, then the first witnesses are (to be regarded as) false witnesses. (80).

15 False witnesses have been indicated. The Author (now) mentions the penalty for these.

Yājñavalkya, Verse 81.

The suborner as well as the (false) witnesses should be separately punished with a fine double the amount in  
20 dispute. A Brāhmaṇa, it has been laid down, should be banished.

Mitākṣharā :—He who by pecuniary bribes &c. prepares false witnesses is (called) a suborner, *kūṭakṛt*,  
• Punishment for Those, *sākṣiṇaḥ* cha, witnesses also, who are  
30 false witnesses. thus false, should each separately be punished with a *daṇḍam* *dwiguṇam*, fine double the amount, *vivādāt*, in dispute, i. e. that which has been prescribed for (the party suffering) a defeat in the case of a defeat in the suit. A Brāhmaṇa, however, should be *vivāsyah*, banished, i. e. expelled  
35 from the kingdom, (and) not fined.

This rule, moreover, is to be observed in cases where special motives such as covetousness &c., do not appear, as also when the witnesses are not habituated (to perjury). When, however, a special

motive such as covetousness or the like is apparent, or the party is habituated, the rule has been laid down by Manu<sup>1</sup>: "He who commits perjury through covetousness shall be fined one thousand (paṇas); (he who does it) through confusion<sup>2</sup> (should be punished) in the (punishment laid down for the) lowest Sāhasa; (if he does it) 5 through fear &c. the punishment should be (the same as for) the two middle (Sāhasas,) and (if he does it) through (feelings of) friendship, four times the amount of the lowest Sāhasa. (121). He who does it, through lust shall pay ten times the amount for the lowest Sāhasa (hut), he who does it through wrath, three times the last (of the 10 Sāhasas); (he who does it) through ignorance, full two hundred; but (he who does it) through childishness one hundred (paṇas). (122)." Here, covetousness (Lobhaḥ) means greed for money: Confusion (Mohah)—a distorted impression. Fear (Bhayaḥ)—acute fear. Friendship (Maitri)—excess of attachment. Love (Kāmaḥ)—desire 15 for an intercourse<sup>3</sup> with a woman. Wrath (Krodhaḥ)—non-toleration. Ignorance (Ajñānam)—indistinct knowledge. Childishness (Bālīyaṁ) i.e. non-commencement of knowledge. By thousand &c. are intended (to be indicated) the copper paṇas.

Similarly<sup>4</sup>: "A just king should, however, fine and banish 20

(men of) the three (lower) orders<sup>5</sup> who give false evidence; a Brāhmaṇa he should (only) banish". This, moreover, is applicable to (a

\* Page 51. case of) a habitual (offence), as the present tense has been used in the term: "Kurvaṇān (कुर्वान्), Three classes (trīṇ varṇān) i.e. those 25 commencing with the Kṣatriya order, should be fined as before, and banished (pravāsayet) i.e. should be killed; as the word pravāsa is used in the sense 'to kill' in the Artha-sāstra, and as this text is in the nature of an Artha-sāstra text. There also the (particular kind of) pravāsa viz., cutting off of the lip or the tongue, or deprivation 30 of the life should be observed by regard to the subject-matter of the (particular) perjury (in question). A Brāhmaṇa, however, should be fined and banished i.e. expelled from the kingdom. One from

1. Ch. VIII. 121-122.

2. मोहः.

3. स्त्रीसङ्क्रान्तिसङ्ग्राह, is a better reading.

4. Manu Ch. VIII. 124.

5. Varṇān वर्णान्.

whom clothes have gone is a *vivāśāḥ*. Having prepared the causal form indicative of 'one who causes (a man) to be without clothes,' the present form is obtained by dropping<sup>1</sup> the *ti*—by analogy to the role (in the *Vārtika*): "When there is a suffix at the end of words ending in *ṛ* the change that takes place is the same as that which takes place when the suffix *इत्* is at the end" 'Should make naked' is the meaning. Or, that in which one lives is a *vāsa* (वासः) i. e. a house. *Vivāśayet* therefore would mean—should demolish his house.

Even in the case of a *Brāhmaṇa*, when no special motive such as covetousness &c. is known, nor a habit, only the fine specified in each place respectively (is to be imposed). In the case of a habit, however, there is a pecuniary punishment, as well as banishment. There, also, the rule as regards the several punishments of *vivāśana*, stripping off of all raiments, demolishing the house, and banishment from the kingdom, should be observed having regard to the surrounding circumstances such as the caste (of the party), the amount, &c. If when no special motive such as covetousness &c. is known, as also when no habit is found, in the case of perjury regarding a small claim, even for a *Brāhmaṇa* there will be a pecuniary punishment as is the case with a *Kṣatriya*. When, however, the claim is a large one, banishment from the kingdom is (the punishment). Here in the case of a habit, the rule of *Manu* should be observed even in the case of all.

1. i. e. अन्त् in विशासत्. हि "अचोऽन्यदि हि" (भा० सू० १।१।१४). "The final portion of a word, beginning with the last among the vowels in the word, is called हि". It is that portion of a word which is included between the last letter and the nearest vowel. e. g. in अग्निचित् the portion इत् is हि; as also here in विशासत्, the portion अन्त् is हि.

इट् or इट्च्—"अग्निज्ञायने तमिदित्ते" (भा० सू० २।३।२५)—"When the sense is that of surpassing, the suffixes तप् and इट्च् are used. निच्—the Causal.

Here the formation of the word विशासयेत् is explained as follows: विशासयेत् i. e. should deprive him of his clothes विशासं करोतीति would be विशासयति; but the अन्त् in विशासत् is dropped by analogy to the rule in the case of the तद्धिता इट् contained in the वार्तिक "अग्निपदिकाद्वर्त्ते षट्पठित्पथः." e. g. in the case of लप् we get लपिठे by dropping the हि, so here also by dropping the हि i. e. अन्त् in विशासयति we get विशासयति.

It should not, moreover, be supposed that there is no pecuniary punishment for a Brāhmaṇa. For if there were no pecuniary punishment, corporal punishment being prohibited, it would happen that even in petty offences either the punishment of stripping off of clothes, demolishing the house, branding, or banishment would follow, or that there would be no punishment at all. And this would be opposed to the text<sup>1</sup>, "In the case even of persons belonging to all the four orders, for those who do not perform an expiation, legal punishment either corporal or affecting property should be ordered". Also *vide* the text<sup>2</sup>: "A Brāhmaṇa who carnally knows a guarded Brāhmaṇi against her will should be fined a thousand (paṇās)". As to the text of S'ankha: "Of the three (higher) orders, (the punishments of) deprivation of property, corporeal chastisement, imprisonment, ordeal, banishment and branding, are ordained for a Brāhmaṇa". Here on account of the contiguity of corporal chastisement the (punishments of the) deprivation of wealth or of the entire property are intended. For, the (punishments of) corporal punishment and deprivation of entire property have been mentioned together in the text<sup>3</sup>: "As for the Corporal punishment, it begins with (simple) obstruction and extends as far as the deprivation of life; while the pecuniary punishment begins with a *Kāṁin*<sup>4</sup> and extends similarly to the loss of the entire estate". As to what has been said<sup>5</sup> "He should be expelled out of the kingdom leaving all his property (to him) and himself untouched," it has a reference to the first act of the nature of Sāhasa, and not to all (kinds of) offences.

A corporal punishment, however, does not ever occur for a Brāhmaṇa as MANU<sup>6</sup> has stated generally viz: "Let him (i. e. the king) never slay a Brāhmaṇa, though he is immersed himself in all (kinds of) sins". Moreover MANU<sup>6</sup> says: "No greater crime is

1. of Kātyāyana, verse, 484.

2. Of Manu Ch. VIII. 378.

3. Nārada Appendix 54. And also of Kātyāyana verse, 484.

4. The smallest coin. e. g. a Cowrie. It is also described as a money measure, 20 cowries or  $\frac{1}{4}$  of a Paṇa as also that of a Mūṣa.

5. By Manu Ch. VIII. 380.

6. Ch. VIII. 381.

possible on earth than slaying a Brāhmaṇa ; a king therefore must not even conceive in his mind the idea of killing him (a Brāhmaṇa)".

### S'ūlapāṇi.

The Author states a penalty for a false witness

#### Yājñavalkya, Verse 81.

5

*Kūṭakṛt*, 'The suborner', i. e. one who causes false evidence to be adduced, such as the Kshatriya and others, each should be punished with double the amount of that in dispute, as a fine. A Brāhmaṇa, however, with undiminished property, is to be exiled from the country. To that effect says Manu: "Never, on any account, should one slay a Brāhmaṇa, although (he is) immersed in all (kinds of) sins; (the king) should expel him out of the country, with the entire property undiminished" A just king should banish from the kingdom after punishment, the member of the three *Varnas* uttering false evidence; a Brāhmaṇa however should be banished", and various similar penalties varying according to the offences and the *Varnas*, have been stated by Manu, but are not stated here for fear of prolixity.

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#### Yājñavalkya, Verse 82.

He who having been called upon and sworn to give evidence conceals it from others under the influence of passion, should be made to pay an eight-fold fine; a Brāhmaṇa, however, should be banished.

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Mitākṣharā:—Moreover, he who, having accepted to give evidence as of a witness, and *sākshyam s'rāvitaḥ*, having been sworn to give evidence along with other witnesses, at the time of his deposition, tamovṛto, being under the influence of passion i. e. with his mind seized with the feeling of anger &c, *niḥnute*, conceals, *sākshyam* his evidence, *annyebhyaḥ*, from others i. e. witnesses with the words: "I shall not be a witness here &c."

25

that man *dāpyaḥ*, should be made to pay a fine *aṣṭaguṇam*, eight-fold of the amount of the fine (payable) in case of a defeat in the suit. A Brāhmaṇa, however, who is unable to pay an eight-fold amount as fine should be banished.

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35

Penalty for not giving evidence when knowing (the facts).

The penalty of banishment, however, should be

observed to be either the stripping off of clothes, the demolition of the house, or the expulsion from the kingdom according to the nature of the subject-matter of the suit. In the case of others, however, when an eight-fold amount as fine is not possible, the penalties of doing such labour as is appropriate to the caste, fettering in chains, or incarceration in jail, and like others should be observed. And this, again, should be followed (to be the rule) even in the last verse.

When all withhold evidence, then the liability of all is equal. When, however, having given evidence, they speak falsely, then they should be punished, regard being had to the exigencies (of each case). As says Kātyāyana<sup>1</sup>: "Having once given evidence, those who depose to the contrary are liable to be punished, (as) they are guilty of prevarication".

Nor, moreover, ought the witnesses cited by one he approached in secret by another. As says Nārada<sup>2</sup>: "One should not approach in secret a witness cited by the other (side), nor should he (try to) win him over through other (means). A party resorting to such practices is (liable) to lose."

### Viramītrodaya.

The Author mentions the penalty for false witnesses

Yājñavalkya, Verses 81 & 82.

Kāḍākṛtāḥ, 'The enborners', fraudulently carrying on transactions, in short, who make false statements; those witnesses who are of such character, these *prthak prthak*, 'separately' i. e., each one, *virāddi dwiguṇam*, 'twice the amount of that in dispute', should be compelled to pay as *dunḍa*, 'penalty' i. e., should be punished. In some places the reading is *कदाचन* *Kāḍāksyākṛta* 'who have been induced to give evidence fraudulently'.

This, moreover, by reason of the many causes such as carelessness and the like as indicated by the word *tathā*, 'also', to one who has been unnecessarily defeated, an amount of money equal to that in dispute should be caused to be paid as a penalty. This is the substance.



A Brāhmaṇa, however, should be driven out of his country, *Smṛtāḥ*, so it has been declared in the *smṛtis*, and is not to be punished by a money fine.

Yah, 'be', however, *sākṣyam*, *anyebhyaḥ śrāvitaḥ, śrāvītārān*,  
5 'having been called upon and sworn to give evidence by other' and 'after agreeing', i.e., having declared 'I know this fact', afterwards *tamoṣṭaḥ*,  
'under a feeling of anger', i.e., with his mind oppressed with a feeling  
of anger, fraudulently, &c., *sākṣyam niḥnute*, 'conceals his evidence',  
i.e., at the time of making the statement makes trouble, that man should  
10 be compelled to pay a penalty of eight times the amount in dispute. For this kind of offence also, a Brāhmaṇa should be banished only; by the use of the word *tu*, 'however' has been excluded a pecuniary penalty.

Viṣṇu<sup>1</sup> says: "For false witnesses, the confiscation of the entire property". This moreover has a reference to those who are so by habit.  
15 Manu<sup>2</sup>: "(If) from covetousness, he should be fined one thousand (paṇas); (if) through confusion, however, the first amercement; (if) through fear, the two midling (amercements) should be the penalty; (if) through friendship, four times the first (121). (If) through lust, ten times the first, while (if) through anger, three times the last; (if)  
20 from ignorance, full two hundred (paṇas), and (if) through childlessness, one hundred (122). The wise have mentioned these as the punishments for false evidence (81-83).

### S'ūlapāṇi.

#### Yājñavalkya, Verse 82.

25 In the matter of evidence sworn and concealed from others, for him is a penalty of eight times the amount in dispute. The rest is clear.

Not giving evidence, as also giving false evidence has been generally prohibited of the witnesses. The Author mentions cases by way of exception to it

30 Yājñavalkya, Verse 83 (1).

Where men of the (four) orders are (likely) to suffer capital punishment, there a witness may speak an untruth.

1. Ch. V. 175.

2. Ch. VIII. 121, 122, 123.

Mitākṣharā :—Where, if a fact is deposed to, there is the likelihood of a capital punishment (being given)

The Author indicates a case where untrue testimony is permissible. *to men of the four orders, varṇinām i. e. of the S'ūdra, Vaiśya, Kṣatriya and Vipra classes, sākṣhi anṛtam vadet, a witness may speak an untruth, i. e. should not speak the truth. And by this prohibition against true evidence a permission for refusing to give evidence, or for giving false evidence is given for witnesses of whom it has been prohibited before<sup>1</sup>.* 5

Where e. g. in the case of a complaint founded on suspicion, by speaking the truth a *varṇi* is likely to suffer capital punishment, and by speaking an untruth no one is to suffer capital punishment, there an untrue testimony is permitted. Where, however, by speaking the truth either the plaintiff or the defendant is likely to suffer capital punishment, and also by deposing falsely one of the two is likely to suffer capital punishment, there a refusal to give evidence is allowed, provided the king permits. If, however, the king does not let off in any case unless testimony is given, then an incapacity for a witness on account of depravity should be incurred. If that too is impossible then the truth alone should be spoken. For by giving false evidence the taint of a capital punishment for a *varṇi*, as well as that of giving false evidence is incurred. By speaking the truth, however, there would only be the taint of a capital punishment for a *varṇi*. In such a case, moreover, an expiation should be made according to the *S'āstra*. 10 15 20 25

(It may be said) then there would be no sin in giving false evidence or in maintaining silence, as the same has been permitted by *S'āstra*, so the Author says

Yājñavalkya, Verse 83 (2).

30

For purification from that (sin), the special oblation of rice known as the *Sāraswata* should be presented by the twiceborn.

1. Yājñ I. 82 p. 884.

Mitākṣharā :—Tatpāvanāya, for purification from that (sin), i.e. for the atonement of the sin on account of the false evidence, or a refusal to give evidence, Sâraswata charu, the rice oblation, nirvāpyaḥ, should be presented, by dwijâs, the twice-born, each separately. A sacrifice wherein the presiding deity is the goddess Saraswatî is (called) a Sâraswata: The word charu is well known as indicative of boiled rice which is hot and from which water has not been allowed to flow out (while it was boiling).

Here this is the meaning: False evidence or a refusal to give evidence which has been prohibited for witnesses before has here been sanctioned. This expiation is in reference to the transgression of the rules generally prohibiting the giving of false evidence or not giving any, and as is to be found in the texts: "One should not tell an untruth"; "a man incurs a sin by not giving evidence, as also by giving a distorted one".

It may be objected that this text which is in the nature of a sanction is meaningless inasmuch as even with this text allowing witnesses to tell an untruth or not to speak at all, the text propounding the sin incurred by reason of the infringement of the general rule prohibiting witnesses from either speaking an untruth or not speaking at all, remains where it was. But it is not so. For the sin accruing from the infringement of the rule prohibiting witnesses from telling an untruth or not speaking at all is great, while that due to the infringement of the general rule is small, and thus the text in the nature of a permission has a meaning.

Although in other cases the removal of (the taint of) a greater sin would also secure the removal of the smaller sin which is (only) a part (of the greater one), still here by reason of the (special) sanctioning text, as also by reason of the rule as to expiation, it appears that by the removal of the greater (sin) the smaller one is not removed although it is a part of it.

"This text should also be understood as a permission for speaking an untruth, or not speaking at all, in the cases such as those of travellers and others where there is the danger of a capital

punishment being passed upon a *warni*. And as there is no other (special) prohibition, there would be no (necessity for an) expiation. In case the real facts are disclosed in course of time by other causes, the absence of a punishment for witnesses and others also is inferable from this very text.

5

Here ends the Chapter on Witnesses.

### Viramītrodaya.

Thinking of an exception to the penalty etc. for false evidence, the Author proceeds

Yājñavalkya, Verse 83.

10

*Yatra*, 'where', *varṇindam*, 'of the *varṇis*' i.e., of the Brāhmins, Kṣhatriya, and the Vaiśya, *vadhaḥ*, 'capital punishment', i.e., loss of life, results upon stating the truth, *tatra*, 'there', *sākṣī*, 'a witness', *anṛtam*, 'an untruth' i.e., such as may be of use in preventing the loss of life, *vadet*, 'may speak'.

15

*Iti pācandya*, 'for purification from that' i.e., for the wiping off of the (sin of) false statement by means of a penance, *Sarasvatāḥ*, i.e., intended for the goddess Sarasvatī, as stated before, *nīrtvyaḥ*, 'should be offered', thus by means of a part, the (whole) sacrifice has been indicated.

It should not be contended that here the making of a false statement having been permitted, performance of a penance is incongruous; for although this is an exception to the rule stated before regarding the sin generated by the false statement of a witness, still to the general rule about the sin resulting from a false statement, no exception having been stated, the performance of a penance becomes possible.

20

25

Some say, that here is a case of a resort to an unavoidable course, by reason of this sin being smaller as compared with the sin consequent upon the execution of a member of the *Varnas*.

In fact, in this case no sin is generated; by the expression 'for purification from that' it is meant to indicate that there is an absolute

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1. Here Mitrāmīśra gives his own view which in short is that just as killing an animal in a sacrifice is no sin, as it is done under an injunctive text, so here also there is no sin at all. The analogy, however, does not hold here, the expression *for the purification of that* in terms assumes that there is something which requires purification.

nishñātaḥ, has been agreed to by a contract, i. e. settled; in reference to such an amount, if in course of

- Regarding documents in the hand of another person. 5  
time a dispute arose, for the determination of real facts, lekhyam sākṣimat, a writing with ( the attestation of ) witnesses (thereon) i. e. with the attestation of witnesses of the qualities as described above, dhanikapūrvakam, ( commencing) with the name of the creditor—that wherein the creditor is (mentioned) first is a dhānkapūrvakam—that is to say, where the name of the creditor is mentioned first-kāryam, should be made, i. e. should be executed. Or persons, possessing the qualifications mentioned above should be made witnesses. Vide the text: "In disputes regarding whatever act has been done by a party, either witness, or a document in his own hand is ordained for establishing 15 the transaction."

### S'ūlapāṇi.

#### Yājñavalkya, Verse 84.

- Yaḥ Kaschl, 'whatever', in the form of a loan transaction, arthah, has been fixed by mutual consent, 'by such an interval so much is to be paid' and the like, in such a transaction, a document with witnesses i. e. a document hearing witnesses, should be made and that too by first putting the name of the creditor before the name of debtor is written. (84). 20

#### Yājñavalkya, Verse 85.

- And containing, among other things, the year, the month, the half of it, the day (of the month), the names, the castes, and the names of their own gotra, as also the scholastic title, and the names of self, father, and such other details. 25

- Mitākṣharā :—Moreover, samā, the year i. e. the cyclical year; māsaḥ, month, e.g. Chaitra &c; tadardham, the half of it, i. e. the fortnight i. e. the bright or dark (half); ahaḥ, the day, i. e. the date such as the pratipad &c; nāma, names, i. e. of the creditor and the debtor; jātiḥ, caste, i. e. Brāhmaṇa &c; swagotram, the names of their own Gotra. e.g. Vāsiṣṭha &c. containing these i. e. the year &c. 30

&c. Similarly, *sabrahmachārikam*, the scholastic title, e.g. he is the master<sup>1</sup> of many branches of learning i. e. his academical title, such as 'Kātha the master of many branches,' *ātmiyapitrnāma*, the name of self and father; i. e. the name of the fathers of this creditor and the debtor. By the (use of) the term *Ādi*, such other, are included the amount, the caste, the quantity of the amount, the day of the week &c. A writing, containing these<sup>2</sup> should be executed; this is the connection (of this verse) with the last (verse). 5

### S'ūlapāṇi.

#### Yājñavalkya, Verse 85.

10

*Gotra* itself is *sagotra*; *sabrahmachārikam*, 'the scholastic title' such as, a student of such and such *Śākhā*, that writing should have noted on it, the year &c. By the use of the word *ādi*, 'and the like', also of the thing, quantity, kind, and the like. (85).

#### Yājñavalkya, Verse 86.

15

After the contract has been executed completely the debtor should enter his name with his own hand (at the end) with the words: "what is written above has the assent of me the son of such (and such) a one."

**Mitākṣharā:**—Moreover, the contract which was agreed to 20

between the creditor and the debtor by mutual consent, *samāpte*, after it had been completely executed, i. e. written down, *ṛṇi*, the debtor, i. e. the person who incurs (the liability of) the loan, *nivesāyet*, should enter, i. e. write in the document his own name 25  
*swahastena*, with his own hand, i. e. with the words: "Whatever

1. The original in ऋः—Doctor of learning.

2. Referring to this rule in a case of a will made by a Hindu, which was not written by the testator, nor in which was his signature attested, Sir M. Westropp C. J. observed: "We do not think that we are bound to apply this rule strictly, at all events to documents such as wills, which were not recognized by Hindu Law, and were therefore, not within the contemplation of the author." *Radhabai v. Ganesh I. L. R. 3 Bom. 7 at p. 8.*

has been written above in this document, matam, *has the assent of me, i. e.* is what was intended by me, mama, the son of such and such"

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S'ulapāṇi.

Yājñavalkya, Verse 86.

The meaning (of this verse) is plain. In the case of one ignorant of writing, Vyāsa states a special rule: "A debtor who is ignorant, should cause his assent to be written; or even a witness (who is ignorant) by a witness, or by any other in the presence of all witnesses." (86).

10 Yājñavalkya, Verse 87.

The witnesses also, should subscribe in their own hand with their fathers' names before theirs, thus: "Here, so and so, am a witness;" these (witnesses) should be equal.

Mitākṣharā:—Similarly, those persons who have been indi-

15 \* Page 54

cated as sākṣināḥ, *witnesses*, in that document, these also should each separately, swahastēna, in their own hand, subscribe their names preceded

by those of their fathers with the words: "I so and so, Devadatta, am a witness to this transaction." These, moreover, should be (so)

20 selected (as to be) samāḥ, *equal*, in number and quality also.

If a debtor or a witness is not literate, then the debtor through another person, and the witness also through another witness, should in the presence of all the witnesses, cause his declaration to be written down. As says Nārada: "A debtor who is illiterate should  
25 cause his declaration to be put in writing in the presence of all the witnesses, so also should a witness (who is illiterate have it written) by another witness".

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S'ulapāṇi.

Yājñavalkya, Verse 87.

30 *Samāḥ*, 'equal' i. e. equal in qualifications. Those who, however, are ignorant of writing should have it written—thus it has been stated before. (87).

## Yājñavalkya, Verse 88.

"Being desired by both the parties this was written by me so and so, the son of so and so.", thus at the end (of the document) should the writer then subscribe.

Mitākṣharā:—Moreover, then lekhaḥko, the writer, 5  
ubhābhyām prārthitena, being requested by  
Writer's both, i.e. the creditor and the debtor—"By me such  
endorsement. and such Devdatta, the son of Viṣṇumitra this  
document likhitam, has been written", iti ante  
likhet, thus at the end he should subscribe. 10

Now the Author mentions about a document made in one's own hand

## Yājñavalkya, Verse 89.

Although it be without witnesses, a writing which is in one's own hand, all that is declared to be evidence, except 15  
when it is caused by force or fraud.

Mitākṣharā:—Yallekkhyam, that writing, which has been written by the debtor in his own hand, such a writing, tat sākshibhirvināpi, although it be without witnesses, has been laid down by Manu and others to be evidence, balopadhikṛtādṛte, except when 20  
it is caused by force or fraud, i. e. with the exception of that which has been caused by force i. e. compulsion, or by fraud i. e. in the form of (creating) deception, temptation, anger, fear, intoxication &c. Nārada<sup>1</sup> also says: "That document has been laid down as invalid<sup>2</sup> which has been executed by a person intoxicated, by one 25  
against whom a charge had been pending, by a woman, or by a child, and that which had been executed under compulsion; also that which has been caused by fear or fraud".

Such a document, moreover, whether it be written in one's own hand or in that of another, whether it be passed in the course of 30  
a transaction with or without security, should thus far be written conformably to the usage of the country, and should be without

1. Ch. I. 137.

2. अयम्—unreliable as evidence.



prejudice to the rules as to the sequence of sense and the order of words, and should be without dropping any letter or alphabet. It need not, however, be necessarily (conched) in nice language; it may be written even in the peculiar native language of the particular locality.

- 5 As says Nārada: "That document is said to be valid which is not opposed to the custom of the country, the contents of which answer to the rules regarding pledges, and which is not in disregard of the rules about the sequence of ideas and words."

- 10 That which explains in detail is a (rule) *vidhiḥ*. The rule (vidhi) regarding a pledge (*ādhi*) i. e. for executing a pledge. Its characteristic i. e. 'a pledge for custody', a 'usufructuary pledge', a 'pledge with a time limit' &c. That wherein its characteristics are distinct is *vyaktādhivīdhilakṣhaṇam* 'the contents of which answer to the rules regarding pledges &c.; *Aviplutakramākṣharam*, 'which is not in disregard of the rules about the sequence of ideas and words'. Sequence i. e. of ideas (*krama*). *Krama* and *akṣharas* make up the compound word *kramākṣhara*. That wherein the sequence of ideas and words has not been disregarded is *aviplutakramākṣhara*. Such a document of this description, is legal evidence. There is no rule  
20 as regards nicety of language here, as in the case of a royal grant. This is the meaning.

### Vīramitrodaya.

Now the Author expounds the document as a means of proof

Yājñavalkya, Verses 84, 85, 86, 87, 88, 89.

- 25 A document is of two kinds, (one) made in one's own handwriting, and (the other) made in another's hand. Of these, the last should be made with witnesses etc. The first, (even) without witnesses is good evidence if not made under compulsion or through fraud. This is the difference. But a possibility exists of a suspicion arising about a  
30 document written in one's own hand, and with a view to dispel it, that also should be made with witnesses on. Other kinds are of the ordinary particulars.

*Yah kaschit*, 'whatever', *arthah*, 'transaction', in the form of a loan or the like, *parasparam*, 'mutually', by the debtor and the

creditor, *i.e.* between both, by the consent of each, *nishñātāḥ*, 'agreed to', *i.e.* was established, in such a transaction, *lekhyam*, 'a document', with the name of the creditor first written, in the form of recitals couched in expressive language (84). Together with *samā*, 'the year', *māsa*, 'the month', *tadardham*, 'its half', *i.e.* the fortnight; *ahāḥ*, 5  
'the day', *i.e.* the date as well as the day of the week. Together with this, the names of the debtors and the like others who have been the recipients of the loan by its acceptance, also of both the debtor and the creditor, *jātiḥ*, 'caste' such as, a Brāhmaṇa and the like; *sagotram*, 'together with the gotra', *i.e.* gotra only—at some place the reading is 10  
*swagotraka*—containing these.

Along with *Kaṭha* and the like others, *samānam* one who studies the *Brāhma*, *i.e.* a branch of the Vedas, is a *sabrahmachāri*, 'of the same school'; such a portion. *Sabrahmachāriham*, 'the scholastic title' of the debtor and the creditor, the fact of their pursuing the study of 15  
*Kaṭha* or a like other branch (of the Vedas), *ātmiyam*, 'of one's' *i.e.* of the creditor and the debtor, *pitarau*, 'the parents' their names. By the use of the word *ādi*, &c. are included the amount, its kind, and quantity, and the like; marked with these, should be made.

By the use of the word *tu*, 'however', are excluded those made 20  
under compulsion or by fraud; by the second use is excluded one without a document when the document is written by another. This, moreover, should be borne in mind, that even if written by another, a document if admitted to be an extremely honest transaction is good evidence even if it be without a witness; otherwise, however, the decision is to be reached 25  
by means of witnesses. There, the document is used as a means of reminder to the witnesses.

*Artha*, 'the contract', when (it is) completely written down; *yni*, 'the debtor', *yadatra ptre lekhitam*, 'whatever has been written in this document', that, *matam me amuhaputrasya*, 'has the assent of me the son 30  
of so and an.' Thus, after having written this in order, he should write his own name with his own hand, and enter it in the document.

In the case of one ignorant of writing, Vyāsa states a special rule: "A debtor who is ignorant, should cause his assent to be written; or even a witness (who is ignorant), by a witness, or by any other, in the 35  
presence of another and the witness." (86).

'With witnesses', so has been stated. There, the Author mentions the mole—*sākṣināszheti*, 'witnesses, &c.', *samāḥ*, 'equal', *i.e.*

1. यत्—either the bright or the dark half of a month, शुक्ल or कृत्त.

2. *i.e.* in verse 84.

with equal qualifications, *te*, 'these', *i.e.* the witnesses, *śacapitṛndma-lekṣanāpūrakam*, 'with their father's names written before', *atra*, 'in this transaction', *aḥam amukaḥ*, 'I, an and so' by name, *sakṣhi*, 'am a witness', thus *svastastena*, 'in their own hands', *likheyuḥ*, 'should (they) write'. Those who are ignorant of writing should cause it to be written; this is indicated as an addition by the word *cha*. (87).

*Tataḥ*, 'thereafter', *i.e.* after the name of the witness was written, *lekhakaḥ*, 'the writer', *i.e.* the writer of the document, *ubhābhyām*, 'by both' *i.e.* by the creditor and by the debtor, *arthitena*, 'being requested', by name so and so, by myself this, *likhitam*, 'has been written', thus *ante*, 'at the end', *i.e.* rounding up the remaining portion of the document to be written, himself *likhet*, 'should write'.

By the use, twice, of the word *hi*, the object of recording the request, and also the understanding of the import of the document, has been pointed out. (88).

*Vindāpti*, 'even without, &c.', has been explained before. By the use of the word *tu*, is excluded a document written by another and executed with attestation. *Sarvam*, 'all that', by this is expressed all the writings, *viz.*, of the plaintiff, witnesses, the writers of the documents, etc. (84-89).

### S'ūlapāṇi.

#### Yājñavalkya, Verses 88, 89.

The meaning (of Verse 88) is plain.

A document written by the hand of the debtor, even though it be without attestation, still it is good evidence, provided it does not happen to have been caused to be made under compulsion or by fraud. *Upādhiḥ*, 'fraud' *i.e.* deceit. So Bṛhaspati: "A document executed by a dying person, an enemy, one oppressed with fear, a woman, a suffering person, one intoxicated, distressed by a calamity, at night, by fraud, or by force, does not hold good". (89).

While discussing the rules about documents the Author mentions the rule that a debt entered into a document should be paid by three (generations in descent) only.

## Yājñavalkya, Verse 90 (1).

A debt evidenced by writing should be paid however by (persons in) three (generations) only.

Mitākṣharā :—As a debt evidenced by a witness should be given by three (generations) only, so also it is ordained that a debt evidenced by a document should be paid by the borrower, his son, and the sons of that son i. e. by three (generations) only, and not by the fourth and others. 5

An objection :—Indeed by the text "sons and grandsons should pay a debt", it has already been established as a general restrictive rule that a debt should be paid by three only. 10

The answer :—True. But this text has been mentioned with a view to meet a suggestion which may likely be made that a debt entered in a document might be understood as an exception to this general rule on the strength of its having been found in another *Smṛti*. For, after mentioning the characteristics of a document it has been said by kâtyāyana : "Thus, an ancestral debt is made payable after the (proper) time has passed". Thus an ancestral debt which is entered into a document is made payable even though the time (for payment) has passed. Here by the use of the plural in *pitṛṇām*, 'of the ancestors' as also from the expression 'time has passed' it is inferable that the fourth (descendant) and others may be made to pay\*. 20

Moreover, Hārīta also has said : "To him in whose possession the document purports to be, should payment be directed to be made." Here also by the general rule that 'the debt is his who has the document in his custody', the inference arises that the payment of debts may be made to the fourth (descendant) and others. Therefore it is proper that the present text is for the purpose of removing the doubt. The two texts, moreover, should be supplied in pursuance of the text of the *Lord of the Yogis*. 25 30

1. Verse 90 See p. 792.

2. See *Masit Ullah vs Damodar Prasad* 53 I. A, 204; 48 All 518 Also *Sheo Ram vs. Durga* 3 Luck, 700. Where the Privy Council held that a son was bound by the sale of ancestral property by the father for paying off a debt of his grandfather i. e. the grandfather of the son.

3. i. e. The sage Yājñavalkya.

The Author mentions an exception to it

Yājñavalkya, Verse 90.(2).

A pledge, however, is enjoyed as long as it is not paid off.

5 Mitākṣharā :—The non-liability for paying a debt having become established by the (general) rule in the text: "A debt is payable by three only, although it is reduced to writing and is with a security," an incapacity for recovering a debt might also be inferred. With a view to (avoid) this, the Author has stated this (text).

10 By saying that 'a pledge may be enjoyed even as long as the debt is not paid off, whether by the fourth or the fifth' a capacity has been indicated in favour of even the fourth (person in descent) for redeeming a secured debt.

15 An objection!—But this too has been once stated already in the text<sup>1</sup>: "a usufructuary pledge never lapses".

The answer—True, still if this text which is in the nature of an exception, were not given, it (*i. e.*) the capacity would be confined to three persons only. Thus everything is without a fault.

### Viramītrodaya

20 A document, sometimes is not regarded as conclusive evidence. The Author states that

Yājñavalkya, Verse 90.

25 A loan which has been entered in a document, *tribhira*, by (descendants to) three (generations) only, *deyam*, 'should be paid'. By the use of the word *eva*, 'only', are excluded the great-grandson and others. Therefore the meaning is that even if there be a document, a loan cannot be enforced against a great-grandson and others. By the use of the word *tu*, 'however', is excluded the liability of the grandson to discharge a surety liability included and joined to the word *ṛnam*, 'debt.'

30 *Adhiḥ*, 'a pledge', a possessory pledge such as land, &c., *tārat bhujyate*, 'is as long enjoyed', *yāvat*, 'as long', *tad*, 'that', pledge, *i. e.* that debt is not paid back by the debtor to the creditor. The meaning is that in that way, therefore a document of pledges evidences a good claim even beyond three generations. (90).

S'ulapāṇi.

Yājñavalkya, Verse 80.

A loan as described before entered in a document, excepting a pledge, should be paid by (members of) three generations; not, however, by the fourth. In regard to the rule laid down in the text<sup>1</sup>: "by the son and the grandsons the debt must be paid", this text is intended for limiting it. Where a debt has been advanced after taking a pledge, there this rule does not apply; so Manu<sup>2</sup>: "In regard to (amorous) women, at marriages, for the cow's fodder, as also for fuel, and (in anything) in favour of a Brāhmaṇa, for a (false) swearing there is no sin". (90). 5 10

Having disposed of a matter which had occasionally arisen, the Author resumes the subject in the context proper.

Yājñavalkya, Verse 91.

If a document is in another country, is badly written, or is lost, as also, if it is stolen; likewise if it is torn, burnt, or cut asunder, another should be allowed (by the king) to be made (in its place). 15

Mitākṣharā:—The rule which is now being laid down is that when a document has become unfit for a suit, another should be made. And unsuit for a suit arises, when the document is *des'āntara-sthe*, placed in another country, which is at a long distance; *durlekhye*, when the document is badly written, that is—wherein the writing i. e. the character or words are bad i. e. ambiguous or unintelligible, is (called) a badly written document; in such a badly written document. *Naṣṭe*, lost, i. e. in course of time; *unmīṣṭe*, effaced, i. e. where the characters and letters have been rubbed off on account of the weakness of the ink.; *hr̥ṣṭe*, stolen, i. e. by robbers &c.; *bhinne*, torn, i. e. tattered; *dagdhe*, burnt, i. e. has taken fire; *chhinne*, cut asunder, i. e. when it is cut into two separate pieces. 20 25 30

This (rule applies), moreover, when there is mutual consent of the plaintiff and the defendant. In the case of a difference, however,

1. Verse 50 p. 792.

2. Ob. VIII. 113. It does not appear why this verse is cited here.

and when parties go to law, time should be allowed (as may be necessary, for producing the document which is in another country, having regard to the inaccessibility and badness of roads.

- 5 In the case of a document which is lying in a place which is inaccessible, or which is lost, a suit should be decided by means of witnesses only. As says Nārada<sup>1</sup>: "When a document has been transferred into another country, or hurt, or badly written, or stolen, time should be allowed in case it should exist still; if it be not in existence, the evidence of those who have seen it decides the matter".
- 10 In the case of a document which exists *i. e.* is still in existence, for producing it from another country *time should be allowed i. e.* an interval of time should be granted.

- 15 In the case, however, of that which does not exist *i. e.* has ceased to be in existence, the suit should be decided by examining those witnesses who have seen it before. When, however, there are no witnesses, then the decision should be made by (a resort to) an ordeal, *vide* the text: "In a suit where a document or witnesses are unavailable, the divine proof should be exhibited". This refers to a document between (private) citizens.

- 20 Similar is (the case with) a Royal grant. This, however, is the difference: "A document is known as a Royal grant which bears on it the King's own handwriting, and which is marked with his own signet seals; it is (valid as) evidence in all transactions." Similarly another (kind of) royal deed<sup>4</sup> evidencing success has been mentioned
- 25 by Vṛddhavaśiṣṭha: "That is called a *jayapatra* (a document evidencing success) in which is indicated the manner how the point at issue was proved, which contains the answer as well as the proof, and which has also the decision (recorded) in it. To the litigant who wins and who has established his point, the *jayapatra* should be
- 30 delivered over impressed with the Royal seal and having the signature

1. Ch. I. 146.

2. Of Kātyāyana, Verse 224.

3. See Kātyāyana, Verse, 258.

4. A प्रत्यक्ष a decretal document, *decreta*, a decree and judgment. *Jayapatra* is a "certificate of success" supplied to the successful litigant as evidence of his success in the particular suit. A *Ilina* *patra*—"a certificate of defeat" is only evidence that a particular person was defeated in a particular plea or pleas in a certain litigation.

thereon of the Chief Judge in his hand." Similarly the councillors also should add in their own handwriting thus: "This is approved by me the son of so and so &c." *vide* the text of MANU: "And also the councillors such as are versed in the *Smṛtis* and the *S'āstra*, should add (in) their own hand just as in the (case of) 5  
 \* PAGE 56. procedure (prescribed) for documents". Moreover, a proceeding is not declared to be free from defect except with the unanimous consent of the councillors, as says Nārada: "That (decision of a) dispute is considered to be without a dart where all the members of the judicial assembly declare, 'This is 10  
 right', otherwise the dart remains in it."

Moreover, this rule applies only in the case of a judicial proceeding which contains (all) the four components; *vide* the text: "That is declared to be a *jayapatra* which proves the matter in issue, which contains (all) the four components, and which also bears 15  
 on it the Royal seal." Where, however, there is a defeat, as in the text "One who alters his former statement, one who shuns a trial at law, one who does not put in an appearance, one who makes no reply, as also one who absconds after being summoned—these are the five varieties of a faulty (*Hina*) litigant."—in such a case no *jayapatra* 20  
 is given, but only a *hinapatra*—a certificate of a defeat. This (last) moreover is given with the object of imposing a penalty in course of time, while a *jayapatra* is (given) with the object of establishing the plea of *res judicata*. This is the distinction.

### Viramitrodaya

25

When a document, executed at the time of the transaction of the loan, by reason of its location in another country or a like cause, is not likely to be available for being proceeded upon at the time of the action, another document should be made. That, moreover, when agreed to by both is good evidence; so the Author says 30

### Yājñavalkya, Verse 91.

When a document is *deśantarasthe*, 'located in another country', i.e. lying in a place other than the one in point; *duṣṭe*, 'is faulty', i.e.

1. Ob. III. 117.

2. Of Kātyāyana.

3. Nārada II. 33. The meaning is that here the plaintiff was put out of the court on account of a defeat in his side; and not that the defendant got success after a contest.



the letters in which are ambiguous; *naśhīṣa*, 'is lost', by the paper being destroyed; *unmṛṣhīṣa*, 'effaced' owing to the weakness of the ink, the letters in which are rubbed off; *bhinne*, 'torn', i.e. on account of the papers being separated, cut into two; *dagdhe*, 'burnt', by fire; or  
 5 *chhinne*, 'cut asunder', i.e. being cut into tatters, being split into two; *annyallekhyam*, 'another document', *kṛdayet*, 'should be caused to be made'.

By the use of the word *tathā*, 'likewise', is included the compound word formed; and by *cha* is included the one taken away by a thief.  
 10 By the use of the word *etā*, 'also', the making of another document is excluded in the absence of its being located in another country, &c. If the other side, with a sinful desire for appropriation, does not accept the former document, then after having established (the fact of) the former document by means of witnesses and the like means, another document  
 15 should be made. (91).

### S'ūlapāṇi.

#### Yājñavalkya, Verse 91.

*Unmṛṣhīṣa*, 'effaced', brought about by a defect in the ink; by the use of the word *bhinne*, 'torn', i.e. cut, *chhinne*, 'tattered', i.e. shattered,  
 20 another document with the consent of both may be caused to be made. (91).

The Author mentions the ways of deciding a case when a doubt or dispute about document arises

#### Yājñavalkya, Verse 92.

The genuineness of a doubtful and disputed document  
 25 may be established by (comparison with other) documents and (other writings) of the party (written) in his own hand, and by similar other means; as also by presumption, by confrontation of parties, by direct proof, by marks, by previous connection, by (a probability of) title and by  
 30 inference.

Mitākṣharā:—*Lekhyasya*, of a document, *sandigdhasya*,  
 35 which has been doubted as to whether it is genuine, *s'uddhiḥ*, the

1. i.e. the several circumstances mentioned in the text such as its being in another country, or lost &c.

genuineness, *syāt*, becomes established, *swahastalikhitādibhiḥ*, by comparison with other documents and similar (other writings) of the party, i. e. by (establishing) the genuineness by (means of) another document which was written by him in his own hand. The meaning is that if the letters are similar, the genuineness would be established. 5

By (the use of) the expression, *ādi*, such other, it is implied that the genuineness is established by (pointing out) a similarity with other writings of the witnesses, or the writer, written in their own hands (with the one in dispute). A conclusion arrived at by regard to probability is a *presumption*, *yuktiprāptiḥ*; *Prāptiḥ*—is the (presumption arising from the) connection with the thing in dispute, with the country, period, and persons. A *yukti*—is a probative reasoning as e. g. in 'It is probable that this (particular) thing may belong to this (particular) individual', *kriyā*, direct proof; i. e. the adducing of witness evidence on the point; *chinham*, marks, i. e. distinctive marks such as a *Sri* (ॐ) &c.; *sambandhaḥ*, previous connection, i. e. the mutual relations of advance and acceptance (of loans), even before, between the plaintiff and defendant on account of mutual confidence; *āgamaḥ*, title, e. g.—"he has established a reliable origin of title to the subject-matter in dispute by so much."—These only are the circumstances. By means of these circumstances the genuineness of a disputed writing may be established. This is the context<sup>1</sup>. 10 15 20

When, however, a decision cannot be arrived at in the case of a disputed document, then the decision should be made by the help of witnesses, as says *Kātyāyana*<sup>2</sup>: "When (the genuineness of) a document is disputed the plaintiff should cite those (as witnesses) who appear therein." 25

This text applies to a case where it is possible to have witnesses. In the case, however, where it is not possible to have witnesses, the text of *Hārita* applies, viz.—"Where a party says—'I did not execute this document, he (i. e. the other party) has forged it'—then keeping aside that document, the decision should be made by means of an ordeal." 30

1. अतएव—the order or connection of words in a sentence.

2. Verse, 283.

## Viramitrodaya

The Author mentions the means of removing the doubt about the unreliability of a document.

## Yājñavalkya, Verse 92.

5 Of a document regarding which a doubt has been raised as to whether it is genuine or not genuine, *śuddhīḥ*, 'genuineness', i.e. the certainty of its goodness is determined by noting a good resemblance between it and another writing which is (admittedly) written by the opponent with his own hand. By the use of the word *ādī*, 'and the like',  
10 it is indicated that with the handwriting of the writer of the document in which the witnesses have subscribed, on a comparison with another document, the appearance of a good resemblance with the writing of the document would establish the genuineness.

*Yukti*, 'presumption', i.e. a contrary inference from the statement i.e. 'At present there is no money, it will be paid by me in another month', and the like. *Prāpti*, 'receipt', i.e. the receipt of interest stipulated in the document of loan; *kriyā*, 'proof', in the form of statement of witnesses; *chinham*, 'mark', a special mark particularly  
20 characteristic of the writing by the opponent, e.g. *śrī*, etc.; *sambandhaḥ*, 'connection', such as in regard to the subject-matter of the dispute such as an ear-ring, &c., a finding about the relationship of a creditor, &c., *āgamaḥ*, 'title', i.e. of the subject-matter of the suit, such as a purchase, &c., before that; by these means also the genuineness may be established. (92).

## 25 S'ūlapāṇi.

## Yājñavalkya, Verse 92.

*Yuktīprāptiḥ*, 'presumption by confrontation', in this form:—"In this time, at such a place, it appears probable for this man to have his property, and in the like"; *Kriyā*, 'direct proof', i.e. the evidence of the  
30 witnesses; *chinham*, 'marks' i.e. special signs; *sambandhaḥ*, 'connection', i.e. of the person offering and the one accepting; also by former writings &c. in his own hand a connection with the acceptance, a document about which a doubt has been raised, one may be examined.

By the use of the word *ādī* are included the hands of the witness,  
35 of the writer, and of himself. So says Kātyāyana: "When there is doubt about the hand-writing of the debtor, whether he be living or dead, (by a comparison) with other documents written in his own hand, the decision about the documents (in question) should be reached". (92).

Thus when after the document is established as genuine, as also the liability to pay the debt (a question might arise as to), what should be done if a party is unable to pay the entire debt? So the Author says

## Yājñavalkya, Verse 93.

5

The debtor should write on the back of the bond each payment made by him after making such payment; or the creditor should endorse the amount received by him marked in his own hand.

Mitākṣharā:—When the debtor is unable to pay the entire debt, then he should pay according to his means, 10

An endorse- and write the same on the back of the bond thus:  
ment on the deed. "So much was paid by me;"—or the creditor should endorse *i. e.* write on the back of the document itself whatever amount was upagatam, received, *i. e.* got by him, thus,—"So much was received by me." 15  
How?—*swahastaparichinhitam, marked in his own hand, i. e.* marked by letters written in his own hand. Or, (it may mean this) *vis.* that the creditor should give to the debtor a note of acknowledgement of receipt marked by letters written in his own hand.

## Sūlapāṭi.

20

## Yājñavalkya, Verse 93.

When the debtor is unable to discharge the entire debt, as much amount as he pays, so much the debtor should cause to be endorsed on the back of the debt-bond. The creditor also should give a writing for the endorsement. As says Viṣṇu: "When the whole amount in entirety 25 has not been paid, the creditor should pass a writing in his own hand". (93).

What should be done with the document when the entire debt has been paid off? so the Author says

## Yājñavalkya, Verse 94. (1)

After paying the debt, the document should be caused 30 to be torn, or another should be caused to be made for (evidencing) the acquittance.

**Mitākṣharā** :—Either by instalments or nt once, in its entirety *datwā*, having *paid*, *ṛnam* a *debt*, *lekhyam*, the *document*, executed before, should be caused to be torn.

When, however, the document happens to be in an inaccessible place or is lost, then the debtor *kārayet*,  
 \* Page 57. *should cause*, the creditor to pass to him another document *sudhyai*, as *evidencing the acquittance*.

i. e. discharging him from his obligations as debtor. The meaning is that the Creditor should pass a deed of discharge to the debtor in the order mentioned before.

10 What should be done when a debt incurred in the presence of witnesses is to be discharged entirely? so the Author says

Yājñavalkya, Verse 94 (2)

And a debt which was incurred before the witnesses should be paid off in the presence of witnesses.

15 **Mitākṣharā** :—That debt, however, which was incurred before witnesses should be paid off only in the presence of those who had previously witnessed it.

Here ends the Chapter on Documents.

Viramītrodaya.

20 Just like the document of the loan, the document evidencing its discharge is also a good evidence; so intending, the Author says

Yājñavalkya, Verses 93, 94.

*Lekhyasya*, 'of the document', i. e. of the paper, *prāṇthe* 'on the reverse' side, as he goes on paying the amount in small instalments, so after each payment, *ṛniko abhikṣhet*, 'the debtor should write.' After having paid the entire loan, however, the document of loan given by himself, *pdāyēt*, 'should cause to be torn', i. e. should be cut into pieces.

When, however, the debt-bond is not at hand, *sudhyai*, 'for the acquittance', i. e. as evidencing the certainty about the cessation of his liability as a debtor, *anyailekhyam*, 'another document', reciting the fact of the discharge, *kārayēt*, 'should be caused to be made'.

This is to be particularly noted: A debt which has been taken in the presence of witnesses, that should be paid off in the same manner. By the use of the word *cha*, it is indicated that in the absence of one's own handwriting, the mark of the handwriting of an honest man is to be admitted. By the use of the word *tu*, 'however', in a debt incurred without witnesses, the discharge in the presence of witnesses is excluded. By the use of the word *cha* is included a payment without witnesses of a loan incurred without witnesses. (93, 94). 5

Thus in the Commentary on S'rīmat Yājñavalkya,  
ends the Chapter on Documents. 10

### S'ūlapāṇi.

#### Yājñavalkya, Verse 94.

When the whole amount in entirety has been paid off, the debt bond should be torn. If, however, the document is not available, by way of evidencing the acquittance, another document should be caused to be made. When a loan has been taken in the presence of a witness, it must also be paid in the presence of a witness. (94). 15

Here ends the chapter on Documents.

### Chapter VII.

#### OF THE ORDEALS.

20

Human evidence has been said to be three-fold viz. consisting of documents, witnesses, and possession.

It is now the turn of ordeals; and the Author wishing to expound ordeals as a means of evidence lays down the procedure in ordeals by the first five *s'lokas* commencing with "The balance, the fire &c." (Verse 95). There, presently, the Author mentions the ordeals 25

#### Yājñavalkya, Verse 95 (1).

The balance, the fire, the water, the poison and the *kos'a*, are the ordeals, (prescribed) here for oxheneration (from an accusation). 30

Mitākṣharā:—The five ordeals i. e. those beginning with the balance and ending with the *kos'a* should iha, here, i. e. in the *Dharma-Sāstra*, be offered for *visuddhaye*, exoneration, i. e. for removing an ambiguity about a doubtful point. [ 95 (1) ].

5 Elsewhere have been mentioned other ordeals, even such as the rice and like others, vide the text of *Pitāmaha*: “The balance, the fire, as also the water, the poison, and similarly the *kos'a*, likewise the rice; these are the ordeals; and the seventh is the heated *Māsha*.” Then why say these only? So the Author says

10 Yājñavalkya, Verse 95 (3rd quarter).\*

These are (to be resorted to) in trials on serious accusations.

Mitākṣharā:—*Etāni mahābhīyogeshveva, these in trials for serious offences only.* This restrictive rule<sup>1</sup> which is here laid  
15 down means that these are to be resorted to only in cases of serious accusations, and not that these are the only ordeals. The Author will mention further on the test of seriousness.

An Objection—“Indeed, the *kos'a* also is prescribed even in ordinary suits”—*Vide the text*<sup>2</sup>—“The (ordeal of) *kos'a* should be  
20 caused to be offered even in small (charges).”

The Answer—True. The mention of (the ordeal of) *kos'a* among (those of) the balance and others is not indicative of its being limited to serious charges only, but it implies its extension even to *Sārashtambha*<sup>3</sup> complaints, otherwise it would be extended even to  
25 complaints on suspicion. *Vide the text*<sup>2</sup>: “In the case of those against whom a complaint has been made together with a wager, (the ordeals of) balance and the like should be ordered; while (the

1. Of *Pitāmaha*.

2. A complaint wherein the complainant undertakes to pay a penalty in the case of his failure in establishing his allegations is called a *Sārashtambha* Complaint—an *Asashtambha* is explained as—*एतद्वर्गं दोषोक्तिवर्गोऽसष्टम्* :

3. Of *Pitāmaha*.

ordeals of) the rice and the *kośa* (should be) in complaints of suspicion only. There is no doubt about this."

It may thus be thought that this rule may be applied invariably in the case of serious complaints, complaints on suspicion, and complaints with a wager, so the Author mentions an exception

5

Yājñavalkya, Verse 95. (last quarter.)

When a plaintiff<sup>1</sup> has (agreed) to abide by the result (of the ordeal).

Mitākṣharā:—These *i. e.* the (ordeals of) balance and others become applicable to the plaintiff *abhiyoktari s'irṣhakasthe*, 10  
when the plaintiff has (agreed) to abide by the result (of the ordeal).

*S'irṣhaka*—is the head *i. e.* the fourth part of a suit indicative of the success or defeat—and by this is indicated the punishment.—He who agrees to abide by it is a *S'irṣhakasthaḥ*, *i. e.* amenable to the 15  
punishment laid down in it (*i. e.* the decision).

### Viramitrodaya.

It has been stated<sup>2</sup> before : 'In the absence of any of these, the ordeal is said to be another'. There, the Author expounds the ordeals by an entire chapter

20

Yājñavalkya, Verse 95.

Brhaspati<sup>3</sup>: "The (ordeal by) balance, fire, water also; poison, and *kośa* the sacred water the fifth; (of) rice has been declared as the sixth; and the seventh the heated *māṣka* coin; eighth has been stated to be the ploughshare; and *Dharma*, the ninth. All these ordeals 25  
have been pointed out by the Self-born".

Of the nine ordeals thus enumerated, these five ordeals, *i. e.* the balance, &c., in serious charges only, such as gold-stealing and the like for the *s'irṣhakastha*, "one who has agreed to abide by the decision",

1. अभियोक्त—Lit. person making complaint.

2. *i. e.* the restriction is as to their application, and not as to the kind.

3. Ch. X. 4-5.



i.e. the complainant for *viśuddhaye*, 'for his exoneration', for the removal of suspicion (against him) *iha*, 'here', i.e. in the Dharma Śāstra have been prescribed. *Śirṣhaka* means the offer to hear the penalty upon the success of the matter of the ordeal.

- 5 If it be argued that having regard to the text: 'the *kośa* may be administered even in petty cases', even in charges of a small character, there is *kośa*; the answer is, true, it is so. But, under the text: "For those against whom an accusation has been brought (unaccompanied) with a wager, one should direct the (ordinal of) balance and the like; the rice  
10 also and also the *kośa* in cases of suspicion, no doubt", in accusation accompanied with a wager the *kośa* not being mentioned, this mention of the *kośa* 'for a plaintiff who has agreed to abide by the result' is by way of an exception. As for: "In cases where the plaintiff has not offered to abide by the result, the four ordeals viz., of the balance and  
15 others should be avoided; *kośa* has been stated to be where the plaintiff has not (so) agreed". In this text of Pītāmaha, *kośa* has been stated to be where there is no agreement by the plaintiff to abide by the result; that has a reference to an accusation based on suspicion. (95).

### S'ūlapīṭi

- 20 In the absence of a document, or in the absence of a possibility of a decision about a document, is the ordeal. That the Author states

Yājñavalkya, Versa 95.

- The balance and those other ordeals *Mahābhīyogeshu*, 'in charges for serious offences', such as gold-stealing &c., *Abhiyuktari Śirṣhakashe*,  
25 'when the complainant has to abide by the result', *iha*, in this Śāstra, have been stated. *Śirṣhaka*, is the head. That, moreover, here in the case of the success of the opponent, has been agreed to by oneself.

- In minor charges, however, as stated in other *Smṛtis* the rice should be given. The oaths, moreover, should be caused to be taken in the form of:  
30 the touching of the son's head or similar other acts. These *Bṛhaspati* mentions: "The balance, fire, water, poison, and fifthly the *Kośa*; the rice has been declared as the sixth; the seventh, a heated *Māṣa*, is declared. The ploughshare, the eighth, and the ordeal by Dharma as the ninth". (95).

- 35 By the text: "Next the plaintiff should immediately have written down the evidence by means of which the matter in dispute

(or alleged) is (proposed) to be established", the rule of evidence for an affirmative allegation only has been laid down. The Author says by way of an exception to it.

Yājñavalkya, Verse 96 (1).

\* PAGE 58.

5

Or, by consent, any one may perform (the ordeal), and the other may submit to the judgment<sup>1</sup>.

Mitākṣharā:—Ruchyā, *by consent, i. e.* by the mutual consent of the complainant and the defendant; anyatarah, *any one, i. e.* either the complainant or the defendant, kuryāt, *may perform, the ordeal, itarah, the other, i. e.* the defendant or the complainant (as the case may be), wartayet, *should submit to, i. e.* take upon himself the śīrah, *judgment, i. e.* to the corporeal or pecuniary punishment (specified therein). 10

The meaning is this: Ordeal evidence cannot be confined to the affirmative proof alone, as is the case with human evidence, but it is established both by affirmative and negative proof. And hence in the plea of denial, or of confession and avoidance, or of *res judicata*, an ordeal is permissible according to the option either of the plaintiff or of the defendant. 15

20

### Viramītrodaya.

It has been stated<sup>2</sup> that, "when there are witnesses for both sides, those for him who claims priority should be taken first." There the word 'witness' is merely indicative of evidence; an ordeal is intended for a particular (kind of) plaintiff, 'Never should any one order a complaint for an ordeal again' in this text has been stated by Mann also. The Author states an exception to it 25

Yājñavalkya, Verse 96 (1).

Of the plaintiff and the defendant, of both, whosoever may have a desire for an ordeal; thus where there is their desire for a performance (of an ordeal) or for its non-performance there the rule 'when 30

1. शिरः—Lit. means the head, the top. i. e. last or fourth part of a trial. i. e. that part which declares the success or defeat of parties and the punishment consequent upon it.

2. Verse 17 above; p. 696.

moreover, refer to petty disputes over small amounts. *Vide* the text of Nārada<sup>1</sup>: " (Let him be sworn by) the<sup>2</sup> truth, vehicle, and by his weapons, as also by his cows, grain, and gold; venerable deities or revered ancestors, by their pious gifts or meritorious deeds. He should (be made to) touch the head of his sons or wives, or even of his relatives. Or in all charges the drinking of the *kośa* water also—  
These are the (kinds of) oaths prescribed by MANU in petty cases."

Although oaths also are regarded as an ordeal by reason of the fact that an ordeal is generally understood by the people to be that which decides a point which cannot be determined upon by (means of) human evidence, still a distinction is indicated between these and the ordeals of the balance and others in that, (while) the one is resorted to by reason of the fact that while in the case of one<sup>3</sup> a final decision is obtainable immediately without any interval of time, in case of the other a decision is obtained only after an interval of time, on the analogy of the rule in the '*Brāhmaṇa* and *Puruvājaka*' maxim.<sup>4</sup>

1. Ch. I. 246-250.

2. Ways of swearing several orders have been given by Manu Ch. VIII.

113. see Supra. p. 860 ll. 10-20.

3. This passage requires an explanation. Ordeals are of two kinds. (1) One in which the truth or falsehood of a claim is determined immediately on the spot without any interval of time, and (2) the other which requires some interval of time for a like determination. The ordeals of the balance, fire &c. are instances of the first, because if the man suffers injury in the performance of the ordeal, his defeat is determined then and there. The ordeal of an oath is an instance of the second, inasmuch as under the rules of this ordeal if any calamity befalls a party within a certain period after he takes an oath, he is presumed to have taken a false oath. This necessarily requires an interval of time to elapse. Thus the two types are distinguishable on the ground of their capacity to induce a *prompt* or a *deferred* decision (समन्तन्निर्णयमिच्छन्नेन & कालान्तर-निर्णयमिच्छन्नेन)

3. This is called the ब्राह्मण-परिव्राजक-मन्त्राय. In such a sentence as ब्राह्मणानामन्त्रय परिव्राजकान् the separate and additional mention of परिव्राजकः, who generally are included in the former term, merely emphasises their position as a special part of the general body. So here also, although the balance and oaths equally are both ordeals, still the latter have been specifically mentioned in order to bring out their capacity to induce a decision after an interval of time.

The enumeration, however, of ( the ordeal of ) *kośa* along with  
( those of ) the balance and the rest is due to its

The *Kośa* applicability to serious charges and to complaints  
accompanied by a wager, and not to ( any )

5 similarity with the ordeals of the balance and the rest, nor to its being  
helpful in enabling an immediate decision without any interval of time.

As for the ( ordeals of ) rice and the heated *māṣa*, although  
they are helpful in securing an immediate decision

10 Rice and *Māṣa* without any interval of time, still as they are  
prescribed in petty complaints and in complaints  
on suspicion they are distinguished from the ( ordeals of ) balance and  
the like and hence their non-enumeration along with those; and this  
is a satisfactory explanation.

15 These ordeals and the oaths also may be resorted to in disputes  
regarding debts and the like, having regard to exigencies.

As for the text of *Pitāmaha*, viz. " In disputes regarding  
immovables, ordeals should by all means be avoided ", that is to be  
understood as meaning that when evidence in the form of documents  
or ( the testimony ) of neighbours and the like is available, ordeals  
20 should by all means be avoided.

An objection.—Indeed ordeals are also inadmissible even in  
other suits when other ( kind of ) evidence is available.

Answer.—True. In suits for the recovery of debts and the  
like, ( nevertheless ) even after the plaintiff has exhibited his witnesses  
25 ( duly ) qualified as mentioned before,<sup>1</sup> if the defendant resorts to an  
ordeal after giving an undertaking to suffer punishment ( in case of  
failure ) then an ordeal is also permissible. For it is likely that the  
witnesses may have corrupt motives, while an ordeal is free from all  
( such ) faults, and the object of a law-suit is to find out the truth  
30 about the point in dispute, as indicated in its definition. As says  
*Nārada*<sup>2</sup>: " A decision based on an ordeal which is truth itself is  
a real decision according to *Dharma*, while a decision based on  
witness evidence is a merely legal decision. When a point can be

1. Verses 68, 69, p. 846.

2. Intro. Verse 11—The second half of the verse is different.

established by divine evidence, human or documentary evidence should not be used." The rule viz. "in disputes regarding immovables, when direct evidence such as the evidence of neighbours or the like is available, an ordeal should not be allowed even if the defendant resorts to it after giving an undertaking to suffer punishment (in case of failure)"—has been stated to remove the idea of an alternative course. The text of *Pitāmaha*, viz.: "in disputes about immovables &c." is not intended to exclude ordeals absolutely as otherwise there would be the possibility of a non-decision when documentary evidence, testimony of neighbours, or similar evidence is not available.

## Viramītrodaya.

'When the plaintiff has (agreed) to abide by the result,' thus it has been stated; the Author states an exception to it

Yājñavalkya, Verse 96 (2).

When there is an accusation of a suspected treason against the king, or a heinous sin such as Brāhminicide is suspected, ordeals may be performed without an offer of an agreement to abide by the result. By the word *atha*, 'and also', are included theft and the like offences.

That has been stated in the *Kālikā Purāṇa*: "In charges for adultery with other men's wives, as also for theft, and forbidden intercourse, and for great sins, shall an ordeal be ordered by the king. When there is a mutual conflict, and a wager is laid in a trial, there only the king should administer an ordeal preceded by an agreement to abide by the result. In an accusation for adultery with others' wives, where the complainants happen to be many, an ordeal shall be ordered without an agreement as it is for self exculpation." *Viṣṇu*: "In charges for treason against the king, and also in assaults, the proceedings are commenced without an agreement to abide by the result." *Pitāmaha*: "For those who have fallen under the suspicion of kings, as also those who have been pointed out along with robbers, and also those who are anxious to have their innocence established, the ordeal should be offered with an agreement to abide by the result." *Nārada*: "Even without an agreement to abide by the result the king may administer

1. The meaning is that the alternative of an ordeal as an optional course is not allowed in disputes regarding immovables. The optional application has been restricted to specific cases. For *अथर्व* &c. See note 4. on pp. 708-709 above.

2. Ob. IX. 22.

3. Ch. I. 270. ....

ordeals to his dependents." Also: "An ordeal is proper only when the complainant offers to abide by the result of the test, excepting when ordered by the king." 96 (2).

### S'ulapāṇi.

#### Yājñavalkya, Verse 96.

The person complained against, or the complainant may at their option (any one may) perform the ordeal. The other should offer to abide by the result. In cases of treason against the king, and in grave sins and the like (charges), however, even without any offer, the ordeal should  
10 be performed. Ay says Vishṇu: "In charges of treason against the king, and of *Sahasas* even without an agreement to abide by the result". Pitāmaha: "In cases where persons have fallen under the suspicion of kings, and also those who have been pointed at along with robbers, and those who are anxious to get themselves exonerated, an ordeal may be  
15 administered without any offer (from the other side)". (96).

### General Rules of procedure as to Ordeals.

#### Yājñavalkya, Verse 97.

Having summoned one who has clothes on, who has bathed, and has observed a fast, (the Chief Judge) should  
20 at sunrise cause him to undergo (any of) all the ordeals in the presence of the King and of the Brāhmaṇas.

Mitākṣharā:—Moreover, Prādvivākaḥ, the Chief Judge  
āhūya, having summoned, at sunrise one, who on the previous day  
uposhitam, has observed a fast i. e. on the previous day;  
25 sachailam snātam, and who, has bathed with clothes on in the presence of the king, as also of the Brāhmaṇas and Connellors, kārayet, should cause him to undergo, (any of) all the ordeals sarvāṇi divyāni.

1. Narada Oh. I. 269.

2. वृषासनत् is the reading in Viramitrodaya. The printed text of Nārada has वृषद्विषनात् 'excepting in cases of high treason'.—यदा पुनर्वृषदे काचिद्विषा इति मयति असहायः

3. Oh. IX. 22.

"To one who has fasted for three nights, or to one who has fasted for one night only, and who has purified himself and has wet clothes on, ordeals should always be administered". This optional rule as to fasting as laid down by Pitāmaha is to be actually interpreted by regard to the strength or weakness of the party, as also to the importance or triviality of the charges under consideration. The rule as to fasting, moreover, is applicable also to the Chief Judge who causes the ordeal to be undergone: "In the case of ordeals, (also) the Chief Judge who has fasted should by the King's permission himself observe all the necessary forms." *Vide* this text of Pitāmaha.

Here also although the expression used is "at sunrise" without any particularisation, still having regard to the practice among the wise and the respectable, the ordeals should be administered on a Sunday. And even there, the special rule laid down by Pitāmaha,<sup>1</sup> should be observed *viz.*: "In the first part of the day, shall be the test by fire; during the first part also shall be the balance; in the midday, however, the (ordeal of) water should be administered by one who desires to allow the principles of *Dharma*. In the first part of the day is proof by (the ordeal of) *kośha* ordained; while in the latter part of the night which is quite cool, (the ordeal of) poison may be offered."

As for the ordeals of the rice, the heated *māṣa*, and the like for which no special period has been prescribed, the administration should be also in the first half (of the day), *vide* the text of Nārada<sup>2</sup> which is quite general *viz.*:—"In the forenoon, in regard to all the ordeals, has the administration been proclaimed."

Dividing a day in three parts, the first part is called the *Purvāṇḥa*<sup>3</sup>, the middle the *Mādhyāṇḥa*, and the last the *Aparāṇḥa*.

Moreover, another rule as regards the particular time has been indicated by texts which are in the nature of affirmative and negative injunctions: Of these, those indicated by affirmative injunctions

1. Also Nārada. See *Aparāṅka* p. 697.

2. *Ch.* I, 269.

3. Translated either as First part or "forenoon."

are as follows:—"For (the ordeal by) fire the cold seasons<sup>1</sup> of *S'is'ira* and *Hemanta*, also the autumn season of *Varṣhā* have been prescribed; in the *S'arat* and *Grīṣma* seasons the (ordeal by) water is (administered), and in the seasons of *Hemanta* and *Sis'ira* the  
 5. (ordeal of) poison. The month of *Chaitra*, and of *Mārgaśīrṣha*, as also of *Vaiśākha* are months generally for all the ordeals as they are not unfavourable to these. The (ordeal of) *kośa*, however may be administered always, and the balance at any time." The mention of *kośa* is indicative by implication of all the oaths. Moreover the  
 10 (ordeal of) rice may be administered at all times, since no special rule is mentioned (for it).

That indicated by negative injunctions is as follows—"In the cold season, 'there cannot be a purification by (the ordeal of) water, nor can there be in the hot season a purification by fire. Not in the  
 15. rainy season should (the ordeal of) poison be administered, nor also in the midst of a heavy gale the (ordeal of) balance; nor in the afternoon, nor in the twilight time, nor ever at mid-day".

By the use of the word *cold* (*S'ita*) in the text "there cannot be a purification by water in the season" the seasons of *Hemanta*,  
 20 *S'is'ira*, and *Varṣhā* are also included by implication. And in the text: "nor can there be a purification by fire in the hot season," the repetition of the prohibition in the case of the *Grīṣma* and the *S'arada* seasons which was already established by the affirmative injunction, is indicative of a special injunction (आदत्तम्). The  
 25 circumstances justifying (an ordeal) however will be mentioned further on.

### Viramītrodaya

The Author states the procedure generally for ordeals

*Yājñavalkya, Verse 97.*

30 At the sunrise the Chief Judge should summon the performer of the ordeal who has bathed with clothes on and make him perform all the ordeals in the presence of the Brāhmaṇas, vide *Pitāmaha*: "To one

1. ऋतुः—A season, or periods of the year commonly reckoned to be six, as: "शिशिरं वसन्तं ग्रीष्मं शरत्ः ऋतुविम्बः" viz. *Sis'ira*, *Vasanta*, *Grīṣma*, *Varṣhā*, *Sarat* and *Hemanta*.



who has observed a fast for three nights, or to one who has fasted for one night, should always he administered the ordeals, to one who has cleansed himself and has a wet cloth on." The optimum as to a three-nights' or one night's fast is to be determined by regard to the capacity (of the performer), and by a discrimination between a serious charge and a petty complaint. 5

Also "In regard to the ordeals, all acts the Chief Judge should perform like the Chief priest in a sacrifice, with the observance of a fast and under the order of the king." This fast of the Chief Judge, however, is in the case of the worship of the subordinate deities in the ordeal. 10

Here although it has been stated—"at the sunrise" in general terms, still from the usage of the respectable, Sunday is particularly meant. *Vide* Nārada: "In the fore-noon only has been declared the administration of an ordeal". Pitāmaha: "In the fore-noon shall he the test by fire; and in the forenoon also shall be the balance; in the mid-day, however, should water be administered by one who desires to follow the principles of *Dharma*. In the first part of the day, the purification by *kos'a* has been ordained; while at night in the latter period should be administered poison, when it is quite cool". Similarly, "The month of *Chaitra* and also *Mārgaśīrṣa*, and similarly also *Vaiśākha*, these are the months generally for all ordeals, as they are not unfavourable. The Balance has been stated to be for all seasons: it should be avoided when a violent wind is blowing. The (ordeal by) fire has been declared to be during *Sīśira*, *Hemanta*, and *Varṣā*; during the *Sarad* and the *Grīṣma*, the (ordeal by) water, and in the *Hemanta* and the *Sīśira*, the poison". Nārada: "During the cold season, there cannot be the purification by water; nor can in the hot season there be the purification by fire; not during the rainy season should poison be administered; nor, O king, during a violent storm, the balance". Here, in the word cold, are included the *Hemanta*, *Sīśira* and the *Varṣā*. By the word hot, are included the *Sarad* and the *Grīṣma*. 20 25 30

In the Astrology: "When Jupiter is in *Leo* or in *Capricorn*, as also when Venus is in obscurity, and in the intercalary month, the test should not be performed by one desirous of success. In a clean Sun, as also of the Jupiter. Nor when Venus has become invisible; also when the Sun is in the *Leo*, a test is not ordained by the wise. Not on the eighth, nor on the fourteenth, shall there be a test by 35

expiation. The test as also the inauguration shall be on a Saturday or a Monday".

- Here, briefly the general procedure for ordeals is being written thus:—In the bright half, on an auspicious day, after having finished his daily performances, and with the observance of a fast, the performer after having got first the benediction repeated by the Brāhmanas, should select and appoint the Chief-Judge just as the chief Priest. The Chief Judge also after he is chosen and appointed, after the manner of the ritual of the consecration and donation of a tank, having performed the inauguration sacrifice, with the observance of a fast, on the day following, after having observed the daily performances, on a Sunday, should repeat thus: "Come, O divine Dharma come; enter this ordeal, along with the Guardians of the world and the groups of the *Vasus*, *Ādityas* and the *Marutas*. There with a wet cloth on, the performer of the ordeal should perform the ordeal as ordained. Here the fast for three nights is for a performer of the ordeal who is capable. This is the distinction. (97).

### S'ūlapāṇi.

#### Yājñavalkya, Verse 97.

- 20 'At sunrise', i. e. in the fore part of the day. Nārada: "To a man who has observed a fast for a day and night, who has bathed and has a wet cloth on, in the fore part of the day has the administration of all ordeals been declared". By this, the expression "who has bathed with clothes on" has a reference to wet clothes.
- 25 By some even this verse is not repeated. But Vis'varūpa has included it in the text (97)

The author mentions special rules in the case of (several) persons liable (to an ordeal).

#### Yājñavalkya, Verse 98.

- 30 The (ordeal by) balance is (prescribed) for a woman, a child, an old man, a blind man, a cripple, a Brāhmaṇa, and one diseased; (an ordeal by) fire or water (is for Kṣatriyas or Vaisyas respectively); for a S'ūdra (the ordeal by) poison weighing seven barley-corns only.

**Mitākṣharā** :—stri, Women, i. e. all women without regard to any particular caste, age, or position; bāla, a child, until he attains the sixteenth year, without regard to the particular caste; vṛddhaḥ, an old man, i. e. one who is above eighty; andhaḥ, blind man, i. e. one deprived of the eyesight, panguh, a cripple, i. e. deprived of the use of the feet; brāhmaṇa, A Brāhmaṇa, i. e., the whole caste (Brāhmaṇa); rogi, diseased, i. e., one affected by a disease. The restrictive rule laid down is that for the purification of these, the (ordeal of) balance alone is allowed.

**Agniḥ**, the (ordeal by) fire, as also (that of) the plough (Phala), and the heated māṣa<sup>1</sup> is for a Kṣatriya; jalam, water, alone is for a Vaiśya. The word wa, or, has a restrictive sense. Viśhasya yawāḥ, the barley-corns of poison, saptaiva, i. e. seven only are (ordained) Sūdrasya, for (the purification of) a Sūdra.

By ordaining the (ordeal of) balance for a Brāhmaṇa, and the (ordeal of) poison weighing seven barley-corns only for a Sūdra, the (ordeals of) fire or water come to be ordained for the Kṣatriya and the Vaiśya. This very thing has been made clear by Pitāmaha: "For a Brāhmaṇa the (ordeal of) balance should be offered, the (ordeal by) fire for a Kṣatriya, for a Vaiśya the water (ordeal) has been ordained, and (the ordeal of) poison should be administered to a Sūdra."

As to what has been said<sup>2</sup> that there should be no ordeal in the case of women &c. viz: "An ordeal should

\* Page 60.

never be administered to persons engaged in performing a vow, to those afflicted with a heavy calamity, to the diseased, to the ascetics, or to women, if the rules of Dharma are to be attended to"—that is for removing the rule of option laid down in the text<sup>3</sup>—"or, with consent, the other may perform the ordeal."

1. मासः—<sup>1</sup>is a particular weight-measure of gold; it is either the 1/20th part of a Paṇa. 'मासो विंशतिवर्गो मासो पणस्य परिकल्पितः'—or is the eightfold of a Gunja गुणजमित्यभिप्रेतः—known in the Indian gold market as a māśa (मास).

2. By Nārada I. 256.

3. Of Yājñavalkya II. 96 see p. 913 l. 6-7 above.

The purport is this: In complaints regarding obstruction, when women are the complainants, the ordeal is allowed only for the persons complained against; and even when these are the defendants, the ordeal shall be for the complainants only. In cross-complaints, however, an option only is allowed; and by this text even there, a restrictive rule has been imposed as to the balance only. Moreover, in complaints on suspicion about heinous sins, the (ordeal of) balance alone is prescribed for the women and others.

Thus this text has a purpose, in that it lays down a restrictive rule as to ordeals in the case of women and others when all ordeals are possible in the months of *Margas'irah*, *Chaitra*, and *Vais'ākha* which are common to all ordeals.

Nor, moreover, should it be supposed that, (the ordeal of) the balance alone is prescribed for women at all times, since a rule has been laid down for their purification by the (ordeals of) balance, *kos'a*, and fire, omitting (those of) the poison and water in the text<sup>1</sup>: "And the (ordeal by) poison has not been ordained for women, nor has the (ordeal of) water been laid down; the real truth at the bottom should be sought for from them by means of the (ordeals of) balance and *kos'a*"; similarly the rule should be applied in the case of a child and others.

Similarly, even in the case of the Brāhmaṇas and others also, the rule as to the (ordeal of) balance &c. does not always apply, *vide* the text of *Pitāmaha* viz: "Purification by (the ordeal of) *kos'a* is ordained for all members of all castes; all these ordeals hold in the case of all with the exception of (the ordeal of) poison in the case of a Brāhmaṇa. Therefore when at the common periods the ordeals are equally possible this text is intended to restrict it to that of the balance only. During other periods, however, the ordeals prescribed at the respective times are (allowable) for all. Thus: "In the rainy season fire alone is (prescribed) for all. In the seasons of *Hemanta* and *S'is'ira* there is an option in the case of the three castes, *viz.* of the Kṣatriya and others for the (the ordeals of) fire and poison. For a Brāhmaṇa, however, the (ordeal of) fire alone, and never (that of)

1. i. e. the women etc.

2. Of Nārada.

poison, is allowed; *vide* the prohibition (contained) in the text<sup>1</sup>: "with the exception of (the ordeal of) poison in the case of Brāhmaṇa." During the seasons of *Griṣma* and *S'arada* (the ordeal of) water alone (is allowed). Of those, however, for whom (the ordeals of) fire &c. are prohibited having regard to the special maladies from which they might be suffering, e. g. in the text—"The (ordeal of) fire should be avoided in the case of the lepers, and (that of) the water in the case of persons suffering from cough and heavy breathing; and the (ordeal of) poison should always be avoided in the case of persons suffering from bilious or phlegmatic complaints"—in the case of such persons, even in the periods (specially) mentioned for (the ordeals of) fire &c. the common ordeals of the balaoce &c. alone are allowed. Similarly, having regard to the text—" (The ordeals of) water, fire and also (of) poison should be administered to strong men"—even in the case of weak men, having regard to the prohibitive rule in general, such ordeals should be administered as are conformable to the (special) caste, age, and surrounding circumstances, and as do not offend against the rules as to seasons and time.

### Viramītrodaya.

In regard to the ordeals the Author mentions rules for the performer

### Yājñavalkya, Verse 98.

For one who is below the age of sixteen, for the aged, for the blind, for a cripple, for a Brāhmaṇa, and also for one suffering from a disease, *Balance* is the ordeal. For a *S'adra*, however, the Fire, Water, or of the Poison, (in which) portions measuring seven *yaṇas* may be given.

Nārada<sup>2</sup>: "For a Brāhmaṇa the *Balance* should be given, for a Kṣatriya, the *Fire*, the consumer of oblations; for a Vaiśya should be given *Water*, and for a *S'adra* *Poison* only. Generally for all, the *kośa* has been declared by the thoughtful, excepting the *poison* in the case of a Brāhmaṇa; for all, however, the *Balance* has been stated."

Kātyāyana<sup>3</sup>: "For a member of the kingly order the *Fire*, the *Balance* for the *Vipra*, and for the Vaiśya the *Water* should be administered; or for all, all the ordeals, excepting the *poison* in the case of the

1. Of Pitāmha. See above.

3. Verses, 422-423.

foremost of the twice-horn. The twice-horn who follow the occupation of tending the cattle, the trades, also of artisans and dancers, as also of messengers and usurers, should be given like as to a *S'ādra*". Similarly<sup>1</sup>: "Not for the iron-smiths, the *Fire*, nor *Water* for the water-drinkers; also for those experts in the operation of incantation should *Poison* be ever administered. An ordeal should always be avoided for men suffering from diseases; with the rice should be tested one engaged in a vow, or one suffering from a disease of the mouth". 'Engaged in a vow', i. e. a vow of consuming the rice.

10 Nārada: "The eunuchs, persons devoid of virility, men oppressed with grief, as also minors, aged persons and the diseased, one should always test in the *Balance*. Not for those suffering from a disease shall the purification be by *Water*, nor shall the *Poison* be for those suffering from billiousness; for the lepers, the blind, and those  
15 with distorted axle, the performance of the (ordeal by) fire is not ordained (233). Nor should be immersed the women and the infants by those well-versed in the science of religion; as also those who are diseased, or aged, also those men who are weak (313). Persons devoid of energy, those afflicted by a disease, nor those who are suffering should one  
20 immerse in water; immediately they are immersed they might die, these men with a tender vitality (314). Even if these happen to be involved in a charge for a heinous offence, one should never immerse them in water; nor also should they be made to carry fire, nor should they be tested by *poison* (315)".

25 Pitāmaha: "To the drunkard, the voluptuous, as also to the rogues, the *kośa* should not be offered by wise men; as also to those who are unbelievers by nature". Kātyāyana<sup>2</sup>: "Upon a conflict with the usage of the country and the time, one should administer as may be proper relatively; an ordeal may be got performed by another<sup>4</sup>; this  
30 is the rule on a conflict". 'On a conflict' i. e. when the accused is incompetent. Nārada: "For those who have entered upon a vow; those who are extremely troubled, those suffering from a disease, as also for those who are engaged in austerities, and for women, there cannot be an ordeal, if the rules of law are to be observed". Kātyāyana<sup>3</sup>:  
35 "For those who are tainted with great sins, and especially for the

1. Kātyāyana, Verse, 424.

2. Ch. I. 255, 313, 314, 315.

3. Verse, 436.

4. i. e. by one nominated by the accused, when he is not himself able to do the ordeal, but is anxious for an exoneration.

5. Verses, 431, 432.

Yājñavalkya  
Verses 98-99 (1). ] Virami, S'uis. & Mitāksharā—Minimum for ordeals.

unbelievers, for these an ordeal must not be given, and to one who is habitually addicted to sins; so says Bhṛgu (431). In the case of those sinful persons for whom ordeals are prohibited, these should with effort be tested through good men; the king should not pronounce defeat upon one against whom an accusation has been laid (432). (98).

S'ūlapāṇi.

By regard to particular class &c., the Author states particular ordeals

Yājñavalkya, Versa 98.

For a Śūdra, a special rule has been mentioned by Nārada: "For a Brāhmaṇa should be given the *Balance*; for a Kṣatriya *Fire* (the consumer of oblations); for a Vaiśya should be given *Water*; and for a Śūdra, however, *Poison* only. Generally for all, the *Kośa* has been declared by the wise; excepting the *Poison* for a Brāhmaṇa, or for all has been stated the *Balance*".

As to the text "for women, however, no ordeal can there be", by which an ordeal has been forbidden for women, that, however, has no reference to any other.—"For those involved in great sins, and in particular for the unbelievers, never should a king intent on the rules of Dharma administer an ordeal. For good people appointed by these very men an ordeal may be proper". (98).

It has been said<sup>2</sup> (above) that "these ordeals are ordained in the case of serious charges." The Author now mentions that which makes for seriousness in a complaint

Yājñavalkya, Verse 99 (1).

Never until (the subject matter of the dispute is below) a thousand should (the ordeal of) the plough, nor the (ordeal of) poison, nor also of the balance (be allowed).

Mitāksharā:—While the subject-matter of the suit is less than a thousand *Pāṇas*, the ordeals of the plough, the poison, or of the balance should not be caused to be made, and even the common ordeal of water also, as has been said<sup>1</sup>: "The ordeals beginning with

1. The reading here is नाभिस्तं जपेत्तु. Elsewhere the reading is नाभिस्तं त्वजेत्तु: See Kane Verse 432.

2. Verse 95 p. 910.

3. By Pitāmaha.

the balance and ending with that of the poison should be administered in heavy cases." Here the non-mention of the (ordeal of) *kos'a* is accountable by its mention even in connection with petty complaints, in the text: "The (ordeal of) *kos'a* may be offered even in a petty  
5 case." The meaning is that these four ordeals are allowed only in cases for the amount of a thousand *Paṇas* or above, and not below.

An objection:—Indeed the ordeals of fire &c have been specified by Pitāmaha even for (suits for) less, viz.: "In the case of a thousand, the (ordeal of) balance should be offered, so the iron?  
10 (ordeal) should be given for the half of a thousand; for the half of a half, however, the (ordeal of) water, and for the half of that, the (ordeal of) poison has been prescribed."

The Answer:—True. In such a case (however) the rule is to be thus interpreted and applied: The text of Pitāmaha is (to be  
15 accepted as) applicable to such properties by the deprivation of which there occurs a degradation, while the text of the Lord of the Yogis<sup>3</sup> is to be taken as referring to other (kinds of) property. And, moreover, both these texts apply to cases of thefts and violent crimes. In the case of concealment, however, a special rule has been pointed  
20 out by Kātyāyana<sup>4</sup> thus:—"In cases where there is a denial of payment, in such a case the quantity or amount (of the property) should be determined. In cases of theft and assault an ordeal should be administered even if the subject-matter be a trifle. Having ascertained the quantity of the property of whichever kind it may be,  
25 its equivalent in gold should be determined, and then with a gold measure the ordeal should be administered. Having (thus) ascertained the amount (equivalent) in gold coins, for the loss of a hundred, (the ordeal of) poison has been ordained; for the loss of eighty, however, (the ordeal of) fire certainly should be offered. In the case  
30 of a loss of sixty, the (ordeal of) water should be given; while for forty the (ordeal of) balance. For a loss of twenty or ten, however, (the ordeal of) drinking of *kos'a* is ordained. The (ordeal of) rice is ordained for a loss of five and more or the half of its half. For its half or the half of this half, however, the heads of sons or the wife

1. Of Pitāmaha.

2. i. e. the fire.

3. i. e. Yājñavalkya.

4. Verses 416-421.



should be touched. For the loss of a half of this or of its half again, however, the means<sup>1</sup> of proof resorted to in this world have been ordained. A king thus discriminating does not fail in his *religious* or *secular* duties (*Dharma and Artha*)."

\* Page 61.

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In the passage<sup>2</sup> "Having ascertained the amount in gold coin," the term *gold* (coins) is indicative of the measure already mentioned above<sup>3</sup> viz. "Sixteen Māshas make a gold coin." Moreover, the word "loss" here is indicative of a "concealment." In the text<sup>4</sup> "Never until the subject matter is below a thousand should the plough be allowed &c." the thousand of a copper paṇa should be understood. 10

It may be said—Indeed these ordeals have been mentioned in cases of sedition and other crimes, then what of the text<sup>1</sup> "never until the subject-matter is below a thousand should the plough be allowed"? Anticipating this, the Author says 15

Yājñavalkya, Verse 99 (2).

But in the cases of offences affecting the king, and in serious charges, the parties should always undergo an ordeal after having purified themselves. 20

Mitākṣharā :—In cases of sedition, as also in accusations of heinous crimes, always, without regard to the quantity or amount, (the parties) should perform ordeals after having purified themselves by fasting &c.

Similarly a special (rule as to) the place has also been mentioned by Nārada<sup>2</sup>: "Before the gates of the Court or of the Royal palace, or in sight of a temple, or in a cross-road, must be placed, firmly into the earth, after having been covered with perfumes, garlands and unguents." 'Must be placed' i. e. the 25

1. लोभितः इति: as opposed to क्षीयितः. Worldly or human.

2. p. 928 ll. 23-25.

3. Āchāra Adhyāya Verse 363 p. 923 l. 3.

4. Of Yājñavalkya 99 (1) p. 927.

5. Ch. I. 265, 266.

balance. The details have been mentioned by Kātyāyana<sup>1</sup>: "The trial of men accused of heinous crimes should be caused (by an ordeal) before the seat of the God Indra. Of those who are accused of having attempted sedition, the trial should be ordered to be held before the gate of the royal palace. For those born of a connection between a woman of a higher and a man of a lower class, the ordeal should be administered at a place where the roads cross. In the case of others than these, the ordeal should be offered in the court house. This is what the wise think. Of the untouchables, or persons belonging to the basest class, of the slaves, of the *mlechchhas*, of persons guilty of heinous crimes, and of persons born of a *Pratiloma*<sup>2</sup> connection the trial shall never be before the king. In case of doubts, the ordeals known as ordained in each case should respectively be administered."

15 Here end the Rules of Procedure about the Ordeals.

### Viramītrodaya.

By regard to the amount of money in particular cases, the Author states particular ordeals

### Yājñavalkya, Verse 99.

20 In a dispute for a debt &c. for less than a thousand *paṇas*, not the *plough*, nor the *poison*, nor either the *balance* should one administer.

*Nṛpārtheṣhu*, 'in cases of offences against the king' i. e. in charges of treason against the king; *s'uchayaḥ*, 'after having purified themselves' i. e. when they have cleansed themselves by bathing, &c.,  
30 an ordeal like the *plough*, &c., *vaheyaḥ*, 'they should undergo'.

By the use of the word *tathā*, 'also', is added that *water* should not be administered. By the word *cha*, 'and', are included the *sāhasas*. So also Viṣṇu<sup>3</sup>: "Now about the performance (of ordeals). In cases of treason against the king, and in *sāhasas*, according to the option.  
35 In cases of deposits, and thefts, the amount (involved) is the measure."

1. Verse, 434.

2. A *Pratiloma* connection is a union between a man of a lower, with a woman of a higher class, its converse is called the *Anuloma*; see Yājñ. Achāra IV 90-96. pp. 241-261. above.

3. Ch. IX. 1-3.

*Samayaḥ*, 'covenant', i.e. the ordeal, 'according to the option', i.e. in pursuance of the king's wish.

*Kātyāyana*<sup>1</sup>: "Where a gift is denied falsely, there the amount<sup>2</sup> (involved) should be determined. In the case of theft and the *sāhasas*, an ordeal should be given even for small amounts." "Even for small &c., the meaning is that in those petty cases of debts, &c., where an ordeal does not exist, even for those amounts in cases of a theft and *sāhasas*, an ordeal is prescribed.

*Brhaspati*<sup>3</sup>: "The (ordeal by) *Poison*, when a thousand have been stolen; when a quarter less, the *fire*, (ordeal); when less by a third, the (ordeal by) *water*, and when a half is stolen, the *balance* should always be given. When however the accusation is for a four hundred, the *heated māṣa* should be given; for a three hundred, the *rice* should be given, and the *kośa* for a half of it. When a hundred has been stolen or falsely denied, the trial should be by the (ordeal of) *Dharma*. For a cow-thief should be given by the councillors the purification by (the ordeal of) plough. These figures are in the case of persons of lowest degree; for (persons of) the middling (kind) has been stated to be the double; and four times for the highest should be determined and administered by the Judge."

*Viṣṇu*<sup>4</sup>: "In all money-transactions gold shall be regarded as the standard of value (4)....." Similarly, if it be less by a half of gold (*Kṛiṣṇala*), the *kośa* should be offered to a *Sūdra*. For more than that, the *Balance*, *Fire*, *Water* or *Poison*, according to the value. In one of double value the ordeal of oath as described before for a *Vaiśya*; for treble value for one of the kingly tribe, and for the quadruple value for a *Brāhmaṇa*. Not for a *Brāhmaṇa* should the *kośa* be offered, excepting for creating confidence as part of an agreement to be performed in future (16). In the place of a *kośa* a *Brāhmaṇa* may be made to take an oath only with (a clod of) earth dug up by a plough (17). In the case of a person with a previous conviction, even in a matter of a small value, one of the ordeals alone should be administered (18). For one whose good character is well known among good men, not even in cases of large values. (19)." "Excepting, &c."—Where an agreement has been made viz.: "We all jointly shall do this", excepting

1. Verse 416.
2. Meaning thereby that the question whether an ordeal should be given and if so which variety, would be determined after ascertaining the amount involved.
3. Ch. X. 9-12.
4. Ch. IX. 4; 10-19;
5. in Sūtra 16 above.

that. Thers, however, even for Brāhmanas, the *kos'a* may be given. Plough *i. e.* the furrow of an anchor.

Kātyāyana: "After knowing the extent of all things, gold should be fixed as the standard; and the ordeal should be presented according to the gold standard. For a loss which leaves a residue less by a quarter, the *Poison* and the *Fire* is observed there; the *Water*, where the loss is less by a third part; for half of a hundred, the *Balance* has been stated; the drinking of the *Kos'a* water, for its half, or for tenth, fifth, a seventh, or for half of that, the rice, and for half of that the heated *māśka*." 'Of a hundred of gold less than by a quarter', *i. e.*, seventy-five gold coins; 'less by a third part', *i. e.* a third part of a hundred gold; 'its half' *i. e.* half of a hundred, 'for tenth, fifth, seventh, *i. e.* for a tenth part of a hundred, fifth part, or a seventh part,—the drinking of the *Kos'a* water. This is the meaning. Here, moreover, the small proportion is in regard to the lower classes. Yr̥dha Manu: "Having ascertained the quantity of gold, for the loss of a hundred, the *Poison* has been stated; for the loss of eighty, however, should be given the *Fire*; when the loss is of sixty (gold), *Water* should be administered; for a forty, shall be the *Balance*. For the loss of thirty or of ten, Br̥haspati prescribes the drinking of the *Kos'a*; for the loss of five, or a half or of its half, the *Rice*". 'Thirty &c.' *i. e.* for the loss of thirty or for the loss of ten. 'Five' &c. of the half a five or of its half or for the loss of one, the drinking of the *Kos'a* water. This is the meaning.

These texts are in reference to debts &c. as also in regard to things given away. The text of the Author, however, is in reference to one who commits theft. Thus there is no contradiction, so they say.

Here end the Rules of Procedure for Ordeals.

### S'ūlapāṇi.

Yājñavalkya, Verse 99.

In an accusation for a thousand only shall be an ordeal by fire &c. *Nṛpārtheṣhu*, 'in regard to king', *i. e.* in charges of treason against the king &c., and also in accusations for heinous sins, after being purified by a bath &c., they should carry fire. Br̥haspati: "Poison, when a thousand has been stolen; for a quarter less, the fire; when less by a third, the water; and for a half, the balance, should always be given. When the

accusation is for a four hundred, should be given the heated *māṣa*; for a three hundred, the rice should be given, and the *kośa* for a half of it; when a hundred is stolen or also falsely denied, the purification by *Dharma* should be administered. For a cow-thief should be given by the councillors the (ordeal of) plough by all efforts. These figures are for the lowest; for the middling, the double has been stated; and four times for the best should be fixed by the judges". 'For the lowest' i. e. by caste, occupation and qualification. (99).

Thus ends the Chapter on the Procedure for Ordeals

Having thus stated the rules of procedure applicable to all kinds of ordeals, the Author now mentions the process of administering the ordeals of the balance and others

Yājñavalkya, Verses 100, 101, 102.

When men versed in holding a balance have seated a party therein, weighed him against an equal weight, marked a line, and caused him to descend, (100)

"O balance, thou art the abode of truth and wert created by the gods in the olden times, therefore, O auspicious one, speak the truth, free me from suspicion. (101).

O, mother, if it be that I am the sinner then carry me down. If I am pure, carry me upwards". Thus should he invoke the balance, (102).

Mitākṣharā :—Those who know the holding, *dhāraṇam*, i. e. the weighing of a balance, i. e. the gold-

The administration of the balance and other ordeals. smiths and others, by these *pratimānena*, by means of another measure, e. g. clay &c. *sambhūtaḥ*, having been weighed against an equal weight i. e. having been made equal (in weight), and, *tulāmasṛitaḥ*, having been seated in the

balance, i. e. seated into it, the party, i. e. either the defendant or the complainant, *rekṣām kṛtvā*, having drawn the line, determining the ordeal, i. e. having, by means of a white chalk, drawn a mark round that side of the balance wherein he was seated in the position of an equilibrium, and, *avatāritaḥ*, having been made to descend,----

tulāmabhimantrayet, *he should invoke the balance, i. e. offer a prayer to the balance by the following mantra, viz.—“O balance, thou art the seat of truth, (and) purā, in olden times, thou wert, devaḥ, by the gods, i. e. by the Hiraṇyagarbha, and others, vinirmitaḥ, created, i. e. manufactured. Tat, therefore, i. e. for that reason, wada, speak, i. e. point out, satyam, the truth, i. e. the real nature of the matter in dispute. Oh, kalyāṇi, auspicious, i. e. good one, sans'ayānmām vimochaya, free me from this suspicion. Mātar yadyaham pāpakṛt, Oh mother if it be that I am the sinner, i. e. am telling an untruth, tato mām twam adho naya, then you should carry me down. If, however, s'uddhaḥ, I am pure, i. e. am telling the truth, mām urdhvam gamaya, then carry me upwards.”*

The form of prayer for the Chief Judge for addressing the balance has been laid down in other *Smṛtis*. The present *mantra*, however, is for him who performs the ordeal. The test of a success or a defeat is, moreover, obtainable as being indicated by the *mantra* itself, and so has not been mentioned separately.

The construction of the balance, however, having for its object the seating of the party (with it), has been lucidly described by Pitāmaha, Nārada and others thus:—

“The wise should construct a balance after saluting the guardian deities of the quarters, and after cutting down with the incantation of the hymns a sacred tree from which a sacrificial post is obtained. The hymn to be repeated softly at the time of cutting the tree is the one addressed to the God Soma<sup>1</sup>. A quadrangular balance should be made which should also be strong and straight. Ropes should be fastened at three places and with a purpose. The balance should be four *Hastas* in length, and the two posts also should be of equal measure. The space intervening between the two, however,

should be two *Hastas* or half a *hasta* more; and the two (remaining) *Hastas* of both the posts should be dug into the earth. Moreover, two arches should be created in the rear of both the posts, and (these) should always be higher by ten *Angulas* than the balance. Then,

\* Page 62.

1. Thus: सोमो येतुं गीतमः सोमसिद्धये विनियोगः । “सोमो येतुं .....”.

two suspenders of clay, should be prepared, hanging downwards from the arches suspended by ropes and touching the head of the balance. A firm balance facing towards the east should be erected on a holy spot, two scales should be fastened to the sides of both (the posts), and the (blades of the) *darbha* grass should be placed in both the seats with their ends turned towards the East. In the scale towards the west should be weighed the parties (performing the ordeal), and in the other pure clay. There (i. e. on this side) he should place a basket and fill it with bricks, stones, and sand. 5

Here, however, there is an option as to the selection of clay, bricks, stones, or sand. 10

"Persons should be appointed as judges who are well-versed in the weighing of balances viz.: the grocers, the goldsmiths, as also the bronze-smiths. The Judges should always make the balance even and in a line with the suspender, and the wise should place water over the balance; that balance should be considered as even wherein the water does not move." 15

"Having first weighed the man and after having got him down, the balance should always be kept adorned with buntings and flags, and then one knowing the *mantras* should invoke the gods as described in the following procedure: Thereafter the Chief Judge with the flourish of music, with his face towards the East, and with folded hands bearing fragrant odours, flowers, and besmearings, should repeat the following (prayer): "O God Dharma, come, O, come, and be seated in this ordeal accompanied by the Guardian Deities of the quarters and by the groups of the Vasus, Ādityas and Maruts." 20 25

"After having invoked the God Dharmā (to be seated) in the balance, thereafter the (other) parts should be distributed (as follows): Having seated Indra in the East, and the Lord of the Dead in the South, Varuṇa in the portion towards the West, and Kuvera in the North, he should seat Agni and other Guardian Deities of the quarter in the parts in the corners." 30

"Indra has the yellow colour, Yama the blue, and the colour of Varuṇa is like that of *sphaṭika* stone. Kuvera, moreover, has the

lustre of gold, and the god of Fire also possesses the golden hue. Similarly the Nīṛṭi is known to be blue and Vāyu (the god of wind) smoky. Is'āoa is, however, red. Thus should all these be contemplated in the order (mentioned above)."

5 "A wise man should worship the Vasus on the southern side of Indra. Dharā, Dhruva, and similarly Soma, Āpa, Anila, Nala, Pratyūṣha, and Prahāta, are known as the eight Vasus."

10 "Similarly the group of the Ādityas should be placed between the Lord of the Gods and the I's'āna. Dhātā, Aryamā, and Mitra, so also, Varuṇa, Aps'uh and Bhaga, likewise Iodra, Vivasvān, and Pūṣhā and Parjanya known as the tenth; then Twaṣṭā and then Viṣhva not the last though born of the last, these are the twelve Ādityas described by their names."

15 "The point towards the west of Agni is known to be the place for the Rudras, Virabhadra, S'ambhuḥ, Giris'a of great fame, Ajaiśpād, Ahir-bhuddhnyā, Pināki the never-defeated; so also Bhuvanādhis'vara, Kapāli, the lord of the people, Sthānuḥ, Bhavaḥ and Bhagavān are known to be the eleven Rudras."

50 "Between the Lord of the dead and Rakṣha a place should be assigned for the Mother Deities viz.: Brāhmī, Māhes'wari, and also Vaiṣṇavi, Vārāhi, Māhendri, and Chāmunda accompanied by the hands of the followers."

25 "The points to the north of Nīṛṭi is known to be the place for Gaṇes'a, and the place for the Maruts is said to be at the northern side of Varuṇa; Gagataḥ, Spars'anaḥ, Vāyoḥ, Anilaḥ, and also Mārutah, Prāṇah, and the two viz., Prāṇes'a and Jīva are known as the eight Maruts. A wise man should invoke the goddess Durgā at the northern side of the balance."

30 "The worship of these deities is however known to be by (repeating) their own names. Having offered worship to the God-Dharma commencing with the arghya and ending with decorations

1. i. e. the last order, or the Rudras cf. "एकादशस्तथा ऋषा द्वात्रिंश विष्णुपुत्रे । जपन्त्यस्तु सर्वव्याधिनां प्रणाधिकः" ॥ महाभारते I. 65. 16.

2. The principal deity पञ्चदेवता in this ritual.



&c.; thereafter a similar worship should be offered to the other<sup>1</sup> deities viz. commencing with the *arghya* and ending with decorations the service should commence with *gandha* (sandal-paste) and end with *naivedya*.<sup>2</sup>

Here, moreover, having duly constructed a balance adorned with huntings and flags, and having invoked thereon the God Dharma

\*Page 63.

with the hymn—"Come, O come &c.", and with the formula, "I offer this Arghya to Dharma; how to him, &c." having offered *arghya*, *pādyā*

and water, *madhuparka* and water again, a bath, clothes, the sacred thread and the water ending with the offer of the crown, the bracelets and other ornaments, and then to the other deities commencing with the god Indra and ending with the goddess Durgā, with the repetition of the *om* (ॐ) at the beginning<sup>2</sup> of the name of each deity and with the dative case at the end, and having offered worship to them commencing with the *arghya* and ending with decorations, he should then offer to the god Dharma the *gandha* (sandal paste), flowers, burnt perfumes, light, and the *Naivedya*, and then should offer as before to the god Indra and others the worship commencing with the *gandha*. The sandal and flowers for the worship of the balance should be (of a) red (colour), as says Nārada: "With the red sandal paste, red flowers, curdled milk, fried puddings, the rice grains &c. first (he) should offer worship &c. to this balance and then he should do honour to the respectable (people present there)." Of Indra and other gods the worship may be (offered) with red or other flowers such as are available (at this time), as no special rule has been mentioned. Thus should be the order of worship.

All this, moreover, the Chief Judge should do. As has been said: "Then the Chief Judge, a Brāhmaṇa, who has completely mastered the Vedas and the Vedāṅgas, who is accomplished by his learning as well as his conduct, whose mind is calm, and who is free from feelings of jealousy, who is the essence of truthfulness, who is pure, and who is watchful and devoted to the welfare of all beings,"

1. i.e. the secondary or subordinate deities अग्रे देवताः In every performance there is a प्रधानदेवता the principal Deity and the rest are accessories, अग्रे देवताः  
2. This ॐ इन्द्राय नमः &c.  
3. By Nārada.

who has observed a fast and when after cleaning his teeth has worn a clean cloth, should do worship to all the deities as prescribed by the ordinances." Moreover, a sacrifice should be offered in the *Laukika* fire by the four *Ātwijas* in the four quarters, as is said: "Similarly  
5 a sacrifice should be offered in the four quarters by those who have completely mastered the Vedas, by means of ghee, and holy articles of sacrifice, and with the *samidhs* which are the (usual) means of a sacrifice, by repeating the *Sāvitrī* and the *Pranava* mantras with the words *swāhā* at the end of each." The meaning is that each of the  
10 three articles *viz.* the *samidh*, ghee and the rice should be offered 108 times each with the repetition of the *gāyatrī* with the *pranava* at its commencement and again with the addition of the *pranava* at the end after the offer of the oblations with the words *swāhā*.

Thus having performed the worship of the deities with the  
15 oblations as the last, thereafter, having written on a leaf the subject-matter of the dispute, it should be placed on the head of the person wishing to perform the ordeal. As has been said: "Having written on a leaflet, whatever is the subject-matter of the accusation, it should be placed on the head with (the repetition) of this mantra."  
20 The Mantra, moreover, is this: "The sun, and the moon, the fire, the wind, the sky, the earth, the water, the heart, the god Yama, the day as well as the night, and the two evenings, and Dharma, each one knows the action of men." Moreover, the part of the ceremonial commencing with the invocation of the Dharma and  
25 ending with the placing of the leaf on the head, is common to all the ordeals, as has been said: "The whole of this ceremonial preceding the *Mantra* should be observed in all the ordeals; similarly should be observed the invocation of gods."

Thereafter the chief Judge should invoke the balance, *vide* the  
30 text: "One knowing the *Sāstra* should also invoke the balance with this formula and the *mantras* also have been indicated *viz.* : "O balance, you have been created by the Creator for testing the sinful. From the letter *dha* (in your name) you are the incarnation of Dharma; and since from the letter *fa* in your name you determine n

guilty individual when he is weighed (in you), therefore you are known as the *Dhātā*. You know the sins as well as the good deeds of all beings. O God, you alone know those things which mortals do not know. This man who has been accused in a judicial proceeding wishes to establish his innocence; therefore, O Lord, you should be pleased to save him from this suspicion according to the rules of Dharma." The person wishing for an acquittal however should invoke the balance with the *mantra* given above viz. "O balance &c." Thereafter the chief Judge shall place in the balance the person wishing to perform the ordeal, and having placed on his head the leaf, and after seating him in his proper place; *vide* the text: "Should again be seated in it, after having placed the document on him." And while so seated he should be made to sit in that condition for an interval of five *vinādīs*; one knowing the science of astronomy should determine this interval of time, *vide* the text: "One knowing astronomy and who is the best of Brāhmaṇas should determine the interval of time; the interval of five *vinādīs* should be determined by those who are experts in determining time. The interval required for pronouncing ten long letters is known as a *prāṇa*; six *prāṇas* make a *vinādi*. It has also been said: " (the interval required for pronouncing) ten long letters is called a *prāṇa*, six *prāṇas* make a *vinādi*, sixty of these a *ghaṭī*, and of sixty *ghaṭīs* is said to be made a day and night." With 30<sup>3</sup> days is made a month.

During this interval, moreover, pure men should be appointed by the king for determining the acquittal or non-acquittal, and these will declare the acquittal or non-acquittal as has been said by Pitāmaha: "Among the umpires the best Brāhmaṇas who would depose only such as has been seen by them, who are wise, pure, and who are not covetous should be appointed by the king. Umpires

1. *विनादी* see further on, a measure of time equal to 1/100th part of a *Ghaṭī*—24 Seconds.

2. *प्राणविः*—*प्रा* the sky-0, & *प्र*—3; and according to the general rule *प्र* काल प्राणो विः; this can be written as 30.

3. The method by which this figure of thirty is arrived at, is explained above.

of (such a) high character will then inform the king of (his) innocence or non-innocence.

The condition for determining the innocence or non-innocence has, moreover, been laid down<sup>1</sup> thus: "If, on  
5 " Page 64. being weighed he rises, he is undoubtedly innocent. If his weight remains the same as before, or if he goes down, he cannot be acquitted."

As to what has been said by Pītāmaha:—"One who will  
10 show an equal weight is guilty to a small extent, while he whose guilt is large, goes down."—there, although the smallness or the largeness of the matter under complaint cannot be determined by an ordeal,<sup>2</sup> still the smallness or largeness of the punishment would  
15 be determined thereby—viz the (punishment) would be small if the act is done only once or unintentionally, while it would be great if the act is repeated more than once, or has been committed intentionally.

When, however, without any ostensible cause, the scales  
&c. burst or break, even then, there is a non-acquittal *vide* the text:  
20 "Should the base burst, or the scales break, or the beams or the hooks split, or the strings burst, or the transverse beam break, a non-acquittal should similarly be declared (as stated before)".

*Kakṣhā* is the base of the balance; the two *Karkaṣas* are the two iron-hooks slightly bent, fixed at the two ends of the balance to support the scales and resembling the thorns of a crab (ककृ).  
25 The *Akṣha* is the piece of the beam to be placed on the two base-pillars, for holding the balance. When, however, these break on account of a cause which is ascertainable, then he should be placed again, *vide* the text: "In the case when the scales &c. burst or break, the man should again be placed."

1. By Nārada. I. 283.

2. *i. e.* the same having already been stated in the leaf placed on the man's head.

3. Nārada. I. 284. The text actually to be found in the edition of Dr. Jolly is, however, quite the opposite of this: the last line there being  
इति: इतिप्रतिज्ञे—“shall pronounce a formal declaration of his innocence.”  
Kātyāyana, suggests a re-trial, See Verse 440.

Thereafter "The king should please the *Ṛtviks*<sup>1</sup>, *Purohitas*, and the *Āchārya* by means of *dakṣiṇas*. A king causing these to be made in this manner, after having enjoyed (all) the pleasures of enjoyment, obtains a great reputation and is entitled in the end to absolution."

When, however, the king wishes to maintain in the same condition and permanently the balance as described above, then he should build a house for it in order to protect it from damage from the crows &c. *vide* the text<sup>2</sup>: "A balance-house should be erected which should have a wide space, which should be high, and be white-washed, and it should be so situated where the balance (when placed) would not be damaged by dogs, or the *chāṇḍālas*, or crows. There also he should cause to be (invoked and) seated in several quarters the guardian deities of the quarters and other dieties, and should cause their worship to be made there at the three changing periods of the day by means of sandal-paste, flowers, and (other) unctions. He should have it protected by doors, store seeds therein, and have it watched by the guards, should cause earth, water, and fire to be placed therein, and should not allow it to remain unattended<sup>3</sup>". Seeds i. e. of barley, rice &c.

Here ends the Ordeal by Balance.

### Viramītrodaya

Thus, having stated the procedure applicable to all ordeals, now the Author states upto the end of the Chapter the special rules of Procedure for each of the ordeals viz. *Balance* and the rest.

Yājñavalkya, Verses 100, 101, 102.

Those who know the holding i. e. the balancing of the scales such as the goldsmiths &c. by these, *Lekhyas*<sup>4</sup>, 'a writing' such as 'I did not commit theft' and of a like nature, having placed on the head, and

1. A *Ṛtvik* is the head-priest at a sacrifice; a *Purohita* is the head family priest; and an *Āchārya* is one who imparts instruction in the Vedic lore. [See Yajñ.: I. 34-35 pp. 126-127 above (Vol. I; Part I); Manu. II. 140-143.]

2. Of *Pitāmaha*.

3. i. e. the place should not be left deserted; a guard should always be placed to protect the machinery and to help its being kept in tact.

4. *लेख्य इति*. The *Mitākṣharā* reads *लेख इति*, and *Śulapāni* etc. prefer to have the same reading. *Vīracūpa* reads *लेखः इति*, but interprets it similarly as the *Mitākṣharā*.

as against a counterpoise, equalised and so placed in the balance, the person complained against *i. e.* the performer of the ordeal, and having been made to descend into it, with the invocation, “(free) me &c.” he should address the balance *i. e.* on the day of his being tested, he should pray with this *mantra*<sup>1</sup>.

On the second day, moreover, if the person balanced increase *i. e.* goes higher up the equalised weight in the other scale, then he is (declared to be) exonerated *i. e.* is clearly found to be not amenable to the accusation *i. e.* there would be no longer any suspicion of a charge; if, however, he is found to be equal or lower than the counterpoise, then the performer of the ordeal shall not be regarded as exonerated; he shall be deemed to have been defeated. This verse viz “Weighed &c.” is stated in the *Mitākṣharā* in the name of *Pitāmaha*.

The explanation of the *mantra* is, moreover, as follows:  
15. “O balance, you are the abode *i. e.* the place, of truth; by the gods *i. e.* by *Brāhma* &c. formerly *i. e.* in the first creation, you were created *i. e.* produced; therefore *i. e.* for that reason, O auspicious one, speak *i. e.* point out the truth, *i. e.* according to facts; and from this suspicion free me.”

20. “O mother, if I am a sinner *i. e.* am speaking an untruth, then *i. e.* in that case lead me down; if I am pure *i. e.* am speaking the truth, then carry me upwards.”

Here, after the manner of the (*mahādāna*) ‘Prime donation’ of a Weighment Deity (*Tulā-puruṣa*)<sup>2</sup> including a little more in particular matters in the balance so prepared on the day of the weighment,<sup>3</sup> after the writing of the statement solemnly declaring the absence of any cause for the charge against him, and after writing the *mantra*, “The Sun, the Moon, the Fire, the Wind, the Sky, the Earth, the

1. *Mitramiśra* reads after verse 100 the following verse viz.: “तुलितो यदि क्वेत विशुद्धः स्वान्न संशयः १ समो वा ह्यविमानो वा न विशुद्धो भवेन्नरः ॥” which he says that the author of the *Mitākṣharā*, has assigned to *Pitāmaha*, while *Viśvarūpa* cites it as a text of *Nārada*, in which *Smṛti* also it is stated at Ch. I. 283. As a matter of fact, however, *Vijñāneśvara* does not mention any writer; he simply says, ‘it is stated’. The *Smṛti-chandrika* also quotes it as a *Nārada* text p. 110: l. 3.

Water, the heart, and the God *Yama*, the day, and also the night, and the two evenings, each one knows the actions of men and the *Dharma*''; and after placing that document on his head, the Chief Judge should cause the performer of the ordeal in the balance after it is counterpoised, with the repetition of the invocation *mantra*; and on the next day after the completion of the daily performances, with face towards the East with folded hands, invoke the Gods in the balance with the *mantra* as set out before, viz., "Come, O come thou the revered *Dharma*". Thereafter i.e. should perform the worship of the Gods as stated by *Pitāmaha*, as follows: [Here follow the same verses as are set out above in the *Mitākṣharā* 10 at p. 935 l. 29. as far as p. 937 l. 4.]

Then should be offered by four *Ṛtviks* versed in the *Vedas* oblations, each of the *samidhs*, *ghee*, and cooked rice, commencing with the *Prāṇa*, the *Gāyatri* and ending with the *Prapata* and the word *svadhā*, on the four sides of the balance in the *Laukika* fire. Then the Chief Judge should address the Balance—There the *mantras* are these (see above *Mitākṣharā*, p. 938, l. 31 to p. 939 l. 7). Then the Chief Judge should place the performer of the ordeal with the written document on his head, on the balance for an interval of five *Vindādis*. A *Vindādi* is defined thus: "Ten long letters make a *prāṇa*, and six *prāṇas*, make a *vindāḍika*". Thereafter one who goes up, the king's messengers should declare him to be innocent and exonerated. This is in short the substance. Here the measurement and the word for the balance and other details have not been stated out of fear of prolixity. These should be sought for in the statement for *Mahādāna*. (100-104). 25

### S'ūlapāṇi.

Yājñavalkya, Verses 100, 101, 102.

Men conversant with holding the balance such as the grocers &c., after having equipoised the person complained against by means of stones and such like counterpoise, and when thus equipoised by the counterpoise, should mark with a white line the scale adjusted by the fall of strings, and after the person is made to get into it, he should repeat this *Mantra*. 30

- *Nārada*': "After—having well fastened the two scales by the hooks of the beam, he should place the man in one scale and the stone in the other; should place the person in the northern scale and the stone 35

1. 'वद्व' is the reading in *Vīramitrodaya* for 'वद्व' in the *Mitākṣharā*.
2. Ch. I. 271-272.

in the other, in that towards the south; there he should fix a basket with bricks, sand, grains, and balls".

The meaning is that he should address the scale with the mantra. "Thou O, Balance, you are the node of truth". Here the success or  
 5 defeat should be inferred from the indication of the balance going up or down. So Pitāmaha: "When weighed if he is (found to have) increased, he becomes exonerated according to (Dharma) law. If he goes down, he is not exonerated according to some; if equal, he is innocent. One with a small guilt is equal; but one whose guilt is great goes down. By  
 10 the preponderance of Dharma and its power, one who excels (in weight) is declared pure". By saying "according to some", is meant that he should be examined again. So Brhaspati: "If the person complained against when weighed in a balance goes down, he shall be declared guilty; if, however, he remains equal in level, he may be weighed again;  
 15 one who goes up shall be declared to be successful". Vyāsa: "One who goes down is not declared to be innocent; one who goes up is declared pure; one who is level is also not considered to be pure; this is the rule about purification". "Should the scales break or the beam or the bolts break, or the strings burst, or the transverse beam split, the king  
 20 shall administer the ordeal again". By the expression 'he is not declared innocent' is meant that he shall not be deemed to have succeeded, not that he is defeated". (102).

Thus ends the Chapter regarding the Balance.

### The Ordeal by Fire.

25 Now the Author describes the *Ordeal by Fire* coming up in its turn

#### Yājñavalkya, Verse 103.

After the hands of one, by whom rice paddy have been rubbed, have been marked, seven leaves of Asvattha<sup>2</sup>  
 30 should be placed on them, and as many (rounds of) threads should be coiled around.

1. Ob. X. 19.

2. Cf. Narada I. 284. According to Narada, however, a formal pronouncement of the innocence is recommended, while according to this text a re-trial is ordered.

3. Known as अश्वत्थ. The *Ficus Religiosa*.



**Mitākṣharā** :—With the general rules of procedure laid down for ordeals having been complied with, and after the ceremonial commencing with the invocation of the God Dharma and ending with the placing of the document on the head, as described in the ordeal by balance has been gone through, this special rule (of procedure) is laid down in the case of the ordeal by fire. 5

**Vimṛditavrihi**, (*one*) by whom rice paddy have been rubbed, i.e. one by whom has been rubbed i. e. pressed, the rice paddy with both (the palms of) his hands, such a one is called *vimṛditavrihi*. After the *karau*, hands, of him *lakṣhayitwā*, have been marked, i. e. marked, with the juice of red lac &c. those parts bearing a spot, a curl, a scar, or a corn &c. as says Nārada<sup>1</sup>: "All sores or scars on his hands should be marked with signs". Thereafter *Saptās'watthasya parṇāni*, seven leaves of *Aswattha*, nyaset, should be placed, on the two hands joined together, vide the text<sup>2</sup>: "Having covered his two hands joined together with seven *As'wattha* leaves of equal size." These, moreover, together with the hands should be *veṣṭayet*, coiled round, with thread, as many times as there are the *Aswattha* leaves i. e. the meaning is that it should be coiled in seven rounds. 10 15

The threads, moreover, should be seven and white, vide the text of Nārada: "The two hands should be covered round by seven strings of white thread." Then seven leaves of *S'nmī*, also seven blades of the *Dūruvā*<sup>4</sup> grass, and the rice *akṣhatas*, as also rice besmeared with curds, (all these) should be spread over the *aswatthān* leaves, vide the text: "He should spread seven *pippalā* leaves, the *s'nmī* leaves, as also the rice, seven blades of *dūruvā* grass, and rice besmeared with curds." Also should the flowers be spread, vide the text of *Pitāmaha*: "Seven leaves of *As'watthān*, the rice, the flowers, and curds should be placed on the two (palms of the) hands, and then the same should be coiled round." *Sumnasnā*, means flowers. Although there is a text viz.: "He should be considered pure who remains 20 25 30

1. Ch. I. 301.

2. A हृत्पद is the same as a काकपद, 'the sign.'

3. Of Nārada,

4. The *Cynodon Dactylon*,

unscathed at the seventh step while bearing the heated iron in his hands covered with seven leaves of the *Arka*<sup>1</sup>

\* Page 65. tree", still that should be understood as meaning that the *arka* leaves are to be taken in the

5 absence of the *As'wattha* leaves, as the importance of the *as'wattha* leaves is inferrable from the text of *Pitāmaha* in praise thereof viz.:—"From the *Pippala* tree fire is produced, the *pippala* is known as the lord of trees; hence a wise man should spread its leaves on the hands."

10

S'ūlapāṇi.

The Author states the ordeal by fire.

Yājñavalkya, Verse 103.

15 If the hands have scars or sores on account of the crushing of the paddy grains, these should be noticed and in those places of scars, marks should be made with lac drops. So *Nārada*<sup>2</sup>: "On all scars and sores on the palms of the hands marked previously..... after placing seven leaves of the *pippala* tree, should encircle with seven strings." (103).

The Author now mentions the *mantra* invoking the Fire to be repeated by the person performing the ordeal

20 Yājñavalkya, Verse 104.

"O Fire thou pervadest the innermost parts of all created beings, you are the purifier. O omniscient, declare like a witness, the truth about me from my virtues and sins."

25 *Mitākṣharā* :—*Agne twam sarvabhūtānām, O fire you, of all beings, i. e. the viviparous and oviparous animals, the insects born of sweat, as well as the plants germinating from sprouts, antaḥ, in the innermost recesses, i. e. inside their bodies, charasi, pervadest, i. e. remainest there as the digester of all food and drink*  
30 *used; Pāvaka, purifying; i. e. the purifying cause; kave, (O) Omniscient, i. e. knowing all, sākshivat puṇyapāpebhayaḥ*

1. The *Calatropis Gigantea*.

2. Ch. V. 301.

3. अद्विज्ञः, अद्विज्ञाः स्पर्शतः सर्वे भूतवर्गस्योद्दिष्टः. Manu I. 46

*satyam brūhi, declare like a witness the truth about me from my virtues and sins.* The oblique case in the expression *punya-papebhyah* is formed by dropping the *स्य*<sup>1</sup>. The meaning is that having observed my virtues and sins, speak the truth (about me).

When the iron ball is well heated by the three fires and after it is brought out by means of a pair of tongs, the person desirous of performing the ordeal standing in the western enclosure with his face towards the east, should invoke the Fire by means of this *mantra* as says Nārada<sup>2</sup>: "An iron ball fifty Palas in weight, having been made fiery, sparkling, and red-hot, and after it has been heated thrice, thus should one address it in the language of truth." The meaning of this is: In order that the iron may be purified, the iron ball which has been well heated should be thrown into water, and again heated, and again thrown into water, and heating it a third time in the fire, and having then brought it forth by means of a pair of tongs, the performer (of the ordeal) should address it in the language of truth, *i. e.* containing truthful words, with the *mantra*: "O fire thou pervadest all created beings &c."

The Chief Judge, however, having kindled the fire called *Laukika*<sup>3</sup>, towards the southern side of the enclosure, should offer 108 times the oblations of ghee with the *mantra*:—"This is being offered to fire the purifier", *vide* the text: "The (oblations of) ghee a 108 times." Having offered the oblations, and having thrown the iron ball into the fire, while the same, lying there, is being heated, he should perform the ritual described before commencing with the invocation of the God *Dharma* and ending with the offer of oblations, and while the ball is lying being heated the third time, he should address the fire in the (heated) iron ball by the following invocation:

"O Fire, thou art the four Vedas (themselves incarnate) and to thee are oblations offered in sacrifices. Thou art the mouth of

1. *i. e.* the gerundial *वृत्* in *ब्रूहि*. Instead of the fuller clause "having seen my virtues &c." the construction used is "from my virtues and sins."

2. Oh. I. 289-290.

3. *i. e.* ordinary; as distinguished from special fires kindled on special occasions.

all gods, thou art (also) the mouth of the philosophers. Being in the abdomen of all beings, thou knowest all their good and bad deeds. Since thou purifiest the sins thou art called 'the purifier'. In the case of sins, O Fire, exhibit thyself *i. e.* appear in flames, O thou  
 5 holy purifier! while in the case of purity of the heart, be cool, O consumer of all oblations. O Fire thou dwellest in the hearts of all gods as a witness. O god, thou alone knowest those things which no human being knows. This mortal being accused at Law wishes to get himself cleared; therefore it behoves thee to free him from this  
 10 charge according to the sacred Law, *Dharma*."

### S'ūlapāṇi.

#### Yājñavalkya, Verse 104.

Thereafter, after heating the iron ball, this mantra one should repeat. "O you purifier, you wise," &c. all in the vocative case. (104).

#### 15 Yājñavalkya, Verse 105.

After he has addressed in that manner, he should place in both his hands a smooth ball of iron weighing fifty  
 20 palas and red (heated) like fire.

Mitākṣharā:—Moreover, *tasya, of him, i. e.* of the performer (of the ordeal) while thus *uktavataḥ, addressing, i. e.* while invoking with the mantra: "O fire thou pervadest the innermost parts of all beings &c." *lauham, the iron, i. e. made of iron,*  
 25 *piṇḍam, ball, pañcāśatpalikam, weighing fifty palas, i. e. of the quantity of fifty palas, samam, round, having no angle i. e. rounded*  
 and even on all sides and polished and eight fingers in length, *vide* the text of *Pitāmaha*: "After removing all angles and making it even, a ball of iron of eight fingers weighing fifty *palas* should be heated in the fire." *Agnivarnam, red like fire, i. e. resembling fire;*  
 30 *ubhayoḥ hastayoḥ, in both hands, covered with the asvattha leaves,*  
*curds, the durud grass, and other things, nyaset, should place, i. e. the chief judge should deposit.*

1. This is an addition in the 37 manuscript.

S'ūlapāṇi.

Yājñavalkya, Verse 105.

Made of fifty *palas*, an iron ball of eight fingers, made smooth without an angle and also along with the *mantra*, he should place in the hands of him—i. e. the performer of the ordeal. (105).

5.

What then should be done? So the Author says

Yājñavalkya, Verse 106 (1).

He having taken it (into his hands) should walk through only seven circles slowly.

Mitākṣharā :—Sa, *he*, i. e. the man, having taken the heated 10

iron ball in the cavity of his hands, *sapta*

Page 66. *maṇḍalāni sanaiḥ, vrajet, should walk seven*

*circles slowly.* By the use of the term *eva*,

only, the Author indicates that the foot-steps should be placed within the circles, and that he should not go beyond the enclosure, as says 15  
Pitāmaha, "He should not go out of the enclosure, nor should he put his foot inside (the rim)."

It has been said above that "he should walk through only seven circles slowly." There a question may arise as to where are the measurements for one *maṇḍala* each, and what should be the space 20  
intervening between two rounds? So the Author says

Yājñavalkya, Verse 106.

A *Maṇḍala* or a round should be understood to be sixteen fingers (in diameter), and the same should be the space intervening (between two *maṇḍalas* or circles). 25

Mitākṣharā :—That (the length) of which is sixteen fingers is a *śoḍaśāṅgulakam*, sixteen *Angulas*. The circle should be understood to be of the dimension of sixteen *Angulas*. The *antaram*, space intervening, i. e. the distance between two circles is (to be) the same. 30

By saying however that he should walk through seven circles each of sixteen *angulas*, is meant to include the first circle in which he is standing and therefore, in all there would

be eight circles of sixteen fingers each, while other circles (than the one at the centre) would be seven of the same dimension. This very thing has been stated by Nārada<sup>1</sup> by the method of enumeration thus: "The interval between every two circles  
5 is ordained to measure thirty-two fingers or *angulas*. Thus the space covered by the eight circles will be a little more than two hundred and twenty four<sup>2</sup> by the measure of *angulas*".

The meaning is this: The circle other than the first circle and at a distance of sixteen *angulas* is the second circle. Each circle being  
10 removed further on from the second and at a distance of thirty-two *angulas* from the first circle, leaving a space of sixteen *angulas*. Thus seven circles should be gone round each having an intervening space of thirty-two *angulas*. Thus the space of ground intervening between the seven *maṇḍalas* would be two hundred and twenty-four  
15 *angulas* in terms of *angulas*.

The suffix *स्य* is used to indicate all inflexional cases. According to this view, after having made the central round of sixteen *angulas* in measurement, each one of the intervening spaces measuring thirty-two *angulas* and lying between the seven  
20 *maṇḍalas* should be divided into two, and the ground of the intervening space should be fixed at sixteen *angulas*, seven *maṇḍalas* should be created measuring twice sixteen *angulas* the breadth of each being according to the measure of the foot of the person who has to go round. As has been said by the same Author:<sup>2</sup> "A round  
25 should be made as broad as his foot."

As to what has been said by Pitāmaha viz.: "Eight circles should be made, and also a ninth in the front" the first circle should be dedicated to the god *Agni* (fire), the second to (the god) *Varuṇa* (water), the third to the God *Vāyu* (wind), and the fourth to the God  
30 *Yama*; the fifth is consecrated to the God *Indra*, and the sixth is said to be for *Kubera*; the seventh is for the God *Soma*, and the eighth to the *Sun*, and the ninth is for all Gods. This is the practice known to all experts in ordeals.

1. Ch. I. 285, 286.

2. In the printed edition of Nārada the reading is *पञ्चषाण्व* 'fifty-six'; thus the total would be 256.

The interval of space between every two circles is ordained to be thirty-two angulas. Thus the space covered by the eight circles is supposed to measure two hundred and fifty-six angulas. A circle should be made as broad as the foot of the person performing the ordeal. The *kuśa* grass should be spread over all the circles as dictated by the *S'āstra*. 5

There (the meaning is that) after making the ninth circle which is intended for all gods and which is unlimited by any measurement of angulas, the eight circles and the eight intervening spaces together cover a space of two hundred and fifty-six angulas. There also (the number of) circles (actually) to be walked through would be seven only. Since he stands in the first and throws down the ball in the ninth, and so there is no difference as to the measurement of angulas. "Eight planting harleys or three rice-corns make one *Angula*, twelve *Angulas* make one *Vitasti*, two *Vitastis* make a *Hasta*, and four *Hastas* (make) one *Danḍa*. One thousand of these (i. e. *Danḍas*) make one *Kośa*, and four of these (i. e. *Kośas*) make one *Yojana*." Thus should be understood (the table of measurement). 15

S'ūlapāṇi.

20

Yājñavalkya, Verse 106.

Here, the accused, taking hold of the iron ball should walk through the seven *Maṇḍalas* (circles) made of cow-dung, more than seven. Each circle and the distance between each pair of *Maṇḍalas*, shall be sixteen fingers. (106). 25

After having gone through the seven circles what should be done? so the Author says

Yājñavalkya, Verse 107 (1.).

After he has thrown away the (ball of) fire and rubbed his hands with rice, if he is (found to be) unburnt, he should obtain an acquittal. 30

Mitākṣharā:—Standing in the eighth circle and after throwing away in the ninth circle the iron ball heated with fire,

having pressed the rice corns with both his hands, if it is found that his hands remain unburnt, *suddhim āpnuyāt*, he should obtain an acquittal. It follows from this that if his hands be burnt he is considered to be guilty.

- 5 One, however, who through fright stumbles and is burnt elsewhere than on the hands, even then he is not  
 \* Page 67. considered as guilty. As says *Kātyāyana*<sup>1</sup>, "If  
 while under a charge, one stumbles and is burnt  
 elsewhere than at the proper spot, the Gods consider him as unburnt,  
 10 and he should be awarded the entire claim."

### Yājñavalkya, Verse 107 (2).

If the ball falls down on the way, or in the case of a doubt, he should carry (it) again.

- Mitâkṣharâ:—If while (he is) walking, the ball falls,  
 15 *antarâ*, on the way, i. e. even before the eighth circle is reached, or if *śans'ayaḥ*, a doubt arises, as to whether he is burnt or unburnt, then, *tadâ punrâharet*, he should carry it again. This is the rule laid down and as necessarily follows from the sense.

- Here, however, the following is the order of procedure. On  
 20 the previous day having performed the purification ceremony, the next day, the Chief Judge should mark the circles according to *Sâstra*, worship the presiding deities of the circles in their respective places, consecrate the sacred fire and complete the *Santi* sacrifice, and then  
 25 after causing the ceremony of the consecration of the hand, by the pressing of the rice corns &c. to be made, of the person performing the ordeal who had observed a fast, and who after having bathed was standing with wet garments in the western circle, and after tying on his forehead the leaf containing the charge by repeating the *Mantra*, the Chief Judge should invoke the God Fire when the ball  
 30 is heated a third time, and lifting with a tong the heated iron ball which had been duly addressed (by the performer), he should place it in the hands of the person performing the ordeal. And this latter

1. Verse 441.



also if after walking through seven circles and throwing down the ball in the ninth remains unburnt, then he is declared innocent.

### Here ends the Ordeal by Fire.

#### Viramītrodaya.

Now the Author states the procedure for the ordeal by fire, 5  
reached in due course

#### Yājñavalkya, Verses 103, 104, 105, 106, 107.

Tatn, 'thereafter', i. e., after the process stated in the general rules of procedure for the ordeals, and the invocation of the God Dharma &c. vinyāṣita, 'embled', i. e., crushed, triṣayo, 'paddy', by which—of this 16  
description the two hands—; lakṣhayitvā, 'marking' the Chief Judge in the palms of the hands joined together, seven white pipal leaves should be taken; vide the text of Nārada: "Should encircle the white hands with seven fibres of thread". Here, "Having placed the śami leaves, akṣatā grains and also the durvas, these should be deposited 15  
in the leaves" has been mentioned as a special rule in another Smṛti.

Nārada: "In all cavities in the hand one should make the previous marks; and these should again be examined and dotted with spots; thereafter, the seven leaves one should encircle with seven thread strings." 20

Thereafter, while repeating the verse, "O fire &c.", he (the Chief Judge) should place on the hands of the person performing the ordeal—and by the use of the word api, 'even', on the pipal leaves lying thereon—the iron ball weighing fifty palas and coloured red-hot as fire. 25

The meaning of the mantra is: "O Fire, pāvana, 'the purifier', i. e., the purifying cause; Kṛṣṇa, "Omniscient", i. e., all-knowing; sarvabhūtānām, 'of all created beings', i. e., of all sentient beings; antaḥ, 'in the innermost', i. e., inside; charasi, 'pervadest', i. e., move about for the purification of food, drink &c. In the expression puṇyapāpēbhyaḥ 30  
the ablative case is by the elision of the gerundial termination—the meaning is—after having examined the merits and the sins, like a witness declare the truth about me.

In this connection is a Smṛti: "An iron ball red hot like fire, sparkling and well marked, weighing fifty palas, having purified it again 35  
and again, by heating, the Brāhmana at the third time while it is burning,

should address it, premised by truth; as follows: "Listen to this law of men, which has been presided over by the guardian deities of the world. Thou, O Fire, live within the inside of all beings; like a witness, you alone, O Fire, know things which men do not know. This man accused in a court of law desires exoneration; therefore he pleased to relieve him from this suspicion according to Dharma."

The person performing the ordeal; having taken up the iron ball should slowly walk through the seven circles. By the use of the word *eva*, 'only', is indicated the stepping of one foot in the circles and the non-transgression of the circle; as says Pitāmaha: "Never should he step beyond the circle; he should place his foot inside; having gone to the eighth *Maṇḍala*, the wise should throw it in the ninth".

A *Maṇḍala*, 'circle', moreover, should each be known to be sixteen fingers in measurement, and should have an intervening space of sixteen fingers between each.

Now, if after reaching the eighth *Maṇḍala*, and standing there, after throwing it in the ninth *Maṇḍala*, and even after rubbing the paddy if he be *adagdhah*, 'is unburnt', then he should get *buddhi*, 'acquittal, i. e. success in the point at issue. If, however, even before the eighth circle (ie reached) the iron ball drops down, or there be a doubt whether he was burnt or not burnt, then again also according to the procedure stated before, he should carry the iron ball in his hands.

Thus, this is the order here: "On the previous day after having observed a fast and taken his residence, the performer of the ordeal, on the next day, having invoked the God Dharma with the *mantra*, 'Come, come, Oh revered Dharma', having placed on his hand the document, through the nine circles each of the dimension of sixteen fingers and each having an intervening space of sixteen fingers, and marked with rice flour or the like, while standing in the first circle, after the hands were examined and the places of scars having been marked with red dye, when the iron-balls are heated three times, and after he was addressed by the Chief Judge with the words, "Hear this law prepared for men &c.," after having placed seven pipal leaves on the palms, and encircling it with seven white threads together with the pipal leaves, barley, *durra*, and *śami* leaves, and having placed thereon the red hot iron ball, after having in order passed through the other six circles, while standing in the eighth, should throw the iron in the ninth. Thereafter after the paddy grains were crushed by the hands, when he is found to be unscathed, he should be declared as

innocent. Even if burnt in any limb other than the hands, still he should be (regarded as) innocent. (103-107).

### S'ūlapāṇi

#### Yājñavalkya, Verse 107.

Under the text of the Kālīkâ Purāṇa, viz. "After having gone round he should throw it in the grass", having thrown the red-hot iron ball in a heap of grass, after crushing the paddy grains, if he remain unburnt, he gets exoneration. A special rule is stated by Pitāmaha: "Then in his hands should be placed paddy grains or barley; and when after these being rubbed in the hands unhesitatingly, he remains without any injury to the end of the day, he should get an acquittal". If it falls in the interval of the seven circles, or is burnt, or if there be a doubt, he should have the fire again". Kātyāyana: "If the accused falters, or is otherwise burnt; the Gods do not consider him as burnt; to him, it should be offered again". (107)

Thus ends the Ordeal by fire.

Now the Author states the ordeal by Water

#### Yājñavalkya, Verse 108.

"Protect me thou for (the sake of) truth, O Varuṇa" thus having invoked (the God of) water, one should enter the water navel-deep catching hold of the thighs of one who was standing in the water.

Mitāksharā:—Varuṇa satyena māmabhirakṣa twam, 'O Varuṇa thou shouldst protect me for (the sake of) truth', by this mantra having abhīśāpya, invoked, i. e. addressed, kam, i. e. water, catching hold of the thighs of nābhidadhnodakasthasya, one who was standing in the water navel-deep, i. e. of a man who was standing in water to the level of his navel, the person wishing for purification, jalam pravīṣet, should enter the water, i. e. should immerse himself in water.

This, however, (should be done) after the worship of the God Varuṇa has been finished; vide the text of Nārada. "He should first offer worship to the God Varuṇa with concentration by means of

fragrant besmearings, and flowers, and by means of honey, milk, ghee &c." Similarly after the general procedure is observed *i. e.* that beginning with the invocation of *Dharma*, and ending with the worship of all the deities, the performance of the sacrifice, and the placing on the head of the document containing the  
 5 plaint. For, after the Chief Judge has addressed the water  
*rit*: "O water, thou art the life of all sentient beings, wert created before the creation; thou hast been mentioned as the means of the purification of things as well as of corporeal beings,  
 10 hence, O discriminator of the auspicious from the inauspicious, thou shouldst exhibit thyself", the person wishing for an ordeal should then invoke Varuṇa with the *mantra* "O Varuṇa protect me for truth &c." The places for water, have, moreover been mentioned by Nārada: "In streams which have a smooth current, in oceans in  
 15 rivers, in lakes, in ponds, in holy ponds, in tanks and in pools".

So also (has been said) by Pitāmaha: "He should plunge in water which is steady, and not (that) in which are crocodiles, nor which is shallow, that which is devoid of grass or moss, and which is free from leeches and the fish; he should make the purification in water which is  
 20 in the holy ponds. One should always avoid the water which has been brought, as also the water in swiftly flowing rivers. He should always enter such water as is free from waves and mud." Brought, *i. e.* water brought from tanks & and stored in copper pans.

The man standing in the water navel-deep should be firm, grasp  
 25 a consecrated pillar made of the holy tree and stand with his face towards the east; *Vide* the text: "He should stand in water with his face towards the east and grasping the sacred post."

### S'ūlapāṇi.

Now the Author states the ordeal of water

30 Yājñavalkya, Verse 108.

"O Varuṇa, 'protect me by the truth,' thus having caused the oath to be taken in regard to the water to be drunk, and by catching hold of the thighs of another man, either a Brāhmaṇa, Kshatriya, or a Vaiśya, who was

standing in water to the depth of his navel, he should immerse in steady water. **Pitāmaha** : "The wise man should cause a circle to be made, and should devoutly honour it, and the arrows with flowers and incense, as also the bamboo bow." (108).

What should be done then ? So the Author proceeds

5

### Yājñavalkya, Verse 109,

When another swift runner brings back the arrow discharged simultaneously (with the immersion) and if he sees him with his (entire) body immersed in water, he obtains an acquittal.

10

**Mitākṣharā** :—When, *samakālam*, *simultaneously*, with the immersion (of the defendant) one swift runner had gone, *anyaḥ javi*, *another swift runner*, standing at the place where the arrow had fallen, brings back the arrow first discharged, and if he sees him (*i. e.* the person performing the ordeal) *nimagnāṅgam*, *his body* (still) *immersed in water*, then he is declared innocent.

15

This is the substance of what is (meant to be) said :—After three arrows are discharged one man endowed with a velocity goes to the place where the middle arrow has fallen, and taking it up stands there also. Another runner, also swift, stands at the place from where the arrows are discharged, *i. e.* at the bottom of the arch. When the two are thus stationed, the person performing the ordeal immerses into the water at the third clap of the hand (of the Chief Judge.) And even simultaneously with this the man standing at the base of the arch goes swiftly to the place where the middle arrow

25

\* Page 68. had fallen, and immediately after his arrival there, the one standing with the arrow held in his hand swiftly going to the base of the arch, if he does not see him (*i. e.* the performer of the ordeal) on account of his being immersed in water, then he is declared innocent.

30

This very thing has been made clear by **Pitāmaha** : "The running and the immersion (respectively) of the runner and of the performer of the ordeal should be simultaneous. A swift runner should go from the base of the arch to the spot where the arrow has fallen. Immediately after his arrival there, the second also quickly

35

taking up the arrow should go to the base of the arch from where the first man started. If the one with the arrow in his hand, on his arrival (at the base of the arch) does not find him, because he was completely immersed under water, then he, i. e. the Chief Judge,  
5 should declare his innocence."

Nārada, moreover, has laid down the rule for determining the swift runners thus: "Those two men who would stand first in running among fifty runners should be appointed for the purpose of bringing back the arrow." The arch also should be erected on a level  
10 ground near the place of immersion, and equal to a height as far as the ear of the person performing the ordeal. Vide the text of Nārada: "Having reached the place near the water an arch as high as the height (of the performer) upto the ear should be erected on a level ground".

The three arrows as also the bow made of bamboo should first be worshipped with auspicious things such as white flowers &c. vide the text of Pitāmaha, "First the arrows he should worship, as also the bow made of bamboo by means of auspicious articles such as smelling odours, flowers &c. and then should he begin the  
15 performance."  
20

The measurement of the bow as also the place of the target have been mentioned by Nārada<sup>1</sup>: "A strong bow is declared to be 107<sup>2</sup> (angulas) long, a moderate bow 106, and an inferior bow 105 (angulas). This is declared to be the rule regarding the bow. With  
25 the moderate bow a wise man should discharge three arrows having fixed the target at a distance of 150 hastas; if arrows are thrown at a less or a greater distance there would be a flaw." A hundred and seven (107) means one hundred and seven of angulas; this is a strong bow. Similarly, also, about 106 and 105 (respectively). Thus  
30 the dimension of a strong bow has been mentioned to be eleven angulas in excess of four hastas, of a moderate bow, ten angulas, and of an inferior bow, nine angulas.

1. Oh. I. 307.

2 It may also mean 700, 600 and 500 Angulas respectively, the original words being सप्तशतम्, षडशतम् and पञ्चशतम्. The Mītākṣharā interprets these as a hundred plus seven, hundred plus six, and hundred plus five.

The arrows, moreover, should be made of bamboo without an iron; *vide* the text<sup>1</sup>: "For the purification, arrows should be prepared of the bamboo tree without any iron at the end, and the person discharging it should discharge forcefully". The person for discharging the arrow to be appointed, should be a Kṣatriya or a Brāhmaṇa living like Kṣatriya, and one who has observed a fast as has been said<sup>2</sup>: "The person to discharge (the arrow) has been laid down to be a Kṣatriya, or a Brāhmaṇa living like him. He should not have any cruel thought in his mind, must be calm and must have observed a fast, and then should discharge (the arrow)." 5 10

Of the three arrows when discharged, the middle one should be taken, since it has been so laid down in the *Sāstra*; *vide* the text<sup>3</sup>: "The middle-most arrow, however, should be taken up by a strong man." There also, the arrow should be brought from the place where it falls, not to where it moves on; *vide* the text: "The place where the arrow falls should be considered, while the spot where it moves should be avoided, since an arrow may go a long distance by moving and moving." The arrow, moreover, should not be discharged when the wind is blowing violently, nor on a ground which is uneven &c; *vide* the text of *Pitāmaha*: "A learned man should not discharge the arrow when the wind is blowing violently, nor on a spot which is uneven, is covered by trees, or is covered by grass, hush, creepers, plants, mud, or stones." 15 20

By saying that "if he sees him with his entire body immersed in water he obtains an acquittal", the guilt has been declared of one whose body is seen above water. Where the person moves to another place a guilt has also been declared by *Pitāmaha* thus: "Otherwise there shall be no acquittal if even one limb is seen" (also) "Or by his going to a place other than that where first he was made to enter." The expression "if even one limb is seen" is used in reference to the ear &c. as there is a special text<sup>4</sup> viz: "He (the judge) may declare him also as innocent if after immersing into the water his head alone is seen, and not the ears, nor the nose." 25 30

1. Of *Kātyāyana*, Verse, 442.

2. By *Pitāmaha*.

3. Of *Nārada*; Ch. I. 310.

4. Also of *Pitāmaha*.

- The order of procedure here is this: Near the store of water as characterized above, having set up an arch of the description given before, and having fixed the target at a place and at a distance as stated, having properly worshipped the bow together with the arrows  
 5 near the arch and invoked Varuṇa in the store of water, and offered worship to him, having moreover, on the bank (of the water) offered oblations to Dharma and other gods at the end of a sacrifice, the Chief Judge should tie the document containing the complaint on the forehead of the person wishing to perform the ordeal and thus  
 10 address the water with the *mantra*. "O Water thou art the life of living beings &c." Then the person performing  
 \* Page 69. the ordeal having invoked the water with the *mantra*, "(protect me) by the truth &c." should go near the strong man who has grasped firmly the pillar end who  
 15 is standing in water navel-deep. Then, after three arrows are discharged, and after one swift runner has taken his stand at the spot where the middle arrow falls, holding in his hand the middle arrow, and another has stood at the base of the arch and when after this the Chief Judge has given three claps, the running, immersing,  
 20 and bringing back the arrow should simultaneously take place.

Thus ends the Ordeal by Water.

### Viramitrodaya.

Now the Author states the procedure for the ordeal of water, reached in due course

- 25 Yājñavalkya, Verses 108, 109.

- O Varuṇa, *satyaṇa*, 'for truth', *tvaṃ*, 'you', *mā*, 'me', *i. e.*, myself, *abhirakṣha*, 'protect'. Thus having, *abhipragāya*, 'loudly addressed' *i. e.*, invoked 'water', *kṛm*. In some places such itself is the reading'. *Nābhīdudhnam*, 'navel deep' *i. e.*, measuring as far as the  
 30 navel, of one standing there *i. e.*, of a man, catching hold of the thigh, *jalam tiṣet*, 'one should enter the water', *i. e.*, should get immersed into water, the performer of the ordeal. At that time while one with a swift pace has started, another man with a swift pace who was standing at the place from which the arrow was discharged, when he brings back the

1. The several readings are अभिरक्षत, अभिरक्षाय.



arrow and has seen the performer of the ordeal with his body immersed, then he gets an acquittal.

This is what is intended to be said: At the immersion time when an arrow had been discharged and a swift runner had gone to bring it, another arrow immediately discharged thereafter another swift runner brings back, and if at that time he sees him immersed, then he becomes exonerated. Here, this is the procedure: "At the onset one should concentrate and offer worship to *Varuṇa* with sandal paste, fragrant flowers and with sweet milk, ghee &c.," so says *Nārada*. Thereafter, after observing the procedure as stated before viz. from the invocation to the placing of the document on the head, the Chief Judge should address the (God of) Water thus: "Oh Water, thou art moving in the innermost recesses of all created beings, and being a witness, you alone, O Water, know those things which mortals do not know. Being accused in a judicial proceeding this mortal is immersing in you, therefore be pleased to free him from this suspicion according to law." Then the performer of the ordeal should offer a prayer to the Water thus. "O *Varuṇa*, protect me for truth &c." Thereafter, in the still water when another man has entered into it, and with his face towards the East was standing still at a navel-deep spot, the Chief Judge should offer worship to the bow together with the arrow placed near an arch high up to the ear's height and erected near the place of immersion. Then a *Brahmana* or a *Kṣatriya* who has observed a fast, discharges three arrows. When, catching hold of the thigh of the man standing in the water, the performer of the ordeal takes a plunge into the water, that is one period. There one strong man with a swift pace takes the first arrow, and a similar one, another taking up the middle arrow sees the performer of the ordeal still immersed. Here *Pitāmaha*: "Otherwise he shall not be declared to be innocent if even one limb is seen; or if he is seen to have gone to another place where first he was made to enter." (108-109).

### S'ūlapāṇi.

#### Yājñavalkya, Verse 109.

Synchronously with the discharge of the arrow when a very swift runner has gone to bring back the arrow, when he is gone, another man equally swift in pace taking up the middle arrow and when he comes back and sees the performer of the ordeal still immersed with his limbs in water, then the king should declare his innocence. *Bṛhaspati*: "Taking up the middle arrow, another man of the same calibre, returns to the

place from where the (first) man had gone, and on arrival if he does not see the man who is immersed into the water below, then his innocence should be declared, otherwise he will not be considered as innocent, even if one limb is seen."

- 5 Pitāmaha: "The person to discharge (the arrow) to be selected should be a *Kṣatriya*, pure in character, or even a *Brāhmaṇa*; one with a not unkind heart, quiet, and who has observed a fast and has kept himself pure." (109).

Thus ends the Ordeal by Water.

- 10 Now the Author describes the Ordeal by Poison

Yājñavalkya, Verses 110, 111.

"O Poison thou art the son of Brahman. Thou art established in truth and virtue; clear me from this charge. Out of (regard for) truth, be like ambrosia to me." (110).

- 15 Having addressed thus, he should swallow the poison called *S'arṅga* (or ginger) produced on the Himalaya mountains; of him by whom the poison becomes digested without convulsions (The Chief Judge) should declare the innocence (111).

- 20 Mitākṣharā:—With the *mantra*, *Twam vishetyādi*, "O poison &c." having addressed the poison, the person performing the ordeal should, *bhakṣayet swallow*, *viśham himaśailajam*, *poison produced on the Himalaya mountain*, i. e. produced on the mountain peaks. And when such a poison when swallowed by a man
- 25 is digested, *vegairvinā*, *without convulsions*, such a one is declared innocent.

Convulsions from poison occur by the transmission of one humour<sup>1</sup> of the body with another; *vide* the text<sup>2</sup>: "The transmission of a humour of the body into another is known as the

1. वायु—A humour of the body. According to the principles of Aryan Medicine the principal humours which regulate the condition of the body are वायु, (wind), पित्त (biles) & कफ (phlegm). A disturbance in the normal condition of any of these causes all the diseases of the body.

2. Of Pitāmaha,

convulsion of poison." The humours, moreover, are seven<sup>1</sup> viz. "The skin, blood, flesh, fat, bones, the marrow, and the semen". Thus the convulsions of poison would be seven also. The characteristics of these have, moreover, been mentioned in the treatise on poison Viṣṭatantra thus: "The first convulsion from poison brings on a horripilation, and the one next to it (cause) perspiration and the dryness of the mouth; the two next following cause in the body the change of colour and violent tremour. That which is (called) the fifth convulsion brings on syncope, choking of the throat, and the hiccough; the sixth (creates) fast breathing and coma, and the seventh causes the death of the consumer (thereof)." 5 10

Here, moreover, the worship should be offered to the God Mahādeva, as says Nārada: "One who has observed a fast should administer (the ordeal of) poison in the presence of gods and the Brāhmaṇas, after having worshipped (the God) Maheśwara by means of fragrant scents, condiments, and with mantras." The Chief Judge after having observed a fast, should worship the deity Mahādeva, and placing the poison before it, should offer worship to Dharma and others, terminating with a sacrifice, and thereafter having placed the document bearing the complaint on the head of the person performing the ordeal should thus invoke the poison:—viz.:—"O poison thou hast been created by Brāhmaṇ for testing the wicked, (therefore O) expose the soul of the sinners, while be like ambrosia to the pure-minded. O poison thou who art Death incarnate, thou hast been created by Brāhmaṇ, free this man from this (charge of a) sin and become nectar to him by (regard to his) truth." 15 20 25

Having thus invoked, he should give it to one who is standing with his face turned towards the south; vide the text of Nārada: "To one who is standing with his face towards the South, and also in the presence of the twice-born, with his face turned towards the North, or the East, and with concentrated mind he should administer the poison." 30

The poison, moreover, to be taken should be the Vatsanābha poison or the like; vide the text of Pitāmaha: "Of the vatsanābha from the mountain heat or of a poison produced on the Himalays." 35

1. These are त्वक्, अङ्ग, मांस, भेद, अस्थि, मज्जा & शुक्र.

The poisons to be discarded have similarly been laid down : "Distilled poisons, as also poisons which are old, or are artificially prepared, and those produced from the earth—all these poisons should be entirely excluded". Also by Nārada<sup>1</sup> : "Purified poison, as well as poison which has been distilled, similarly, scented and mixed poison, as also the *Kālakūta* and the *Alābu* poison, should be carefully avoided."

The time also has been mentioned by Nārada<sup>2</sup> : "Having weighed the poison which is intended (to be given), it should be administered at a time when the winter has set in. A man knowing the Dharma must not administer it) in the afternoon, nor in the twilight" In any other period, however, a less quantity than that laid down as the standard, should be given, *vide* the text<sup>3</sup> : "Four yavas should be given in the rainy season, and it has been laid down that five yavas should be given in the Grīṣhma. In the Hemanta it should be seven yavas, and in the Ś'arad even less than that". By less is meant six yavas. By the mention of Hemanta, Ś'is'ira also is included; *vide* the Ś'rūti text *viz.* : "By the combination of Hemanta and Ś'is'ira."

Since Vasanta has been regarded as a period common for (the administration of) all ordeals generally, seven  
 \* Page 70. should be given during that season, and the poison also should be given after it is covered with clarified butter; *vide* the text of Nārada<sup>4</sup> : "Let him give to the person performing the ordeal, one-eighth less than twentieth part of a sixth part of a Pala of the poison, mixed with clarified butter." A Pala here, moreover, is equivalent to four gold coins. Its sixth part would be ten Māṣha and fifteen Yavas. Three yavas make one Kṛṣṇapala, and fifteen Kṛṣṇapalas make one Māṣha; thus fifteen yavas make one Māṣha.<sup>5</sup> In this way the (number of) yavas in ten Māṣhas would be one hundred and fifty, and this together with the ten yavas mentioned above make up (the total of) 160 yavas—

1. Oh. I. 321. दृष्ट. Another reading is दृष्ट—spoiled poison.

2. Oh. I. 319 and 320.

3. Nārada Oh. I. 324.

4. Oh. I. 323.

5. दशम is a better reading. दश दशम appears to be wrong.

this is the sixth part of a Pala. A twentieth part from this would be 8 yavas. A twentieth part less by one-eighth of this i. e. less by one yava i. e. seven yavas he should give mixed with clarified butter. The clarified butter should moreover be taken thirty times the (quantity of) poison, *vide* the text of Kātyāṇa<sup>1</sup>: "The poison should 5  
be administered to men<sup>2</sup> in the forenoon and in a cool place; it should be pounded and smooth, and should be mixed with clarified butter thirty times the quantity (of the poison)" i. e. the poison (should be) mixed with clarified butter thirty times its quantity.

The person performing the ordeal should, moreover, be 10  
protected from sorcerers &c ; *vide* the text of Pitāmaha *viz.*: "The king should protect the person about to perform the ordeal from the danger of sorcerers &c. by guarding him with his own men for three or five days. He should also examine and see if there are hidden on his body any medicines, or spells, or any jewels which are effective 15  
as antidotes against poison, as also those secretly produced." Similarly the poison should also be guarded. *Vide* the text of Nārada<sup>3</sup>: "Poison from the mountain peak which is obtained from the Himalayas, is the best as ordained; such as has the colour, flavour, and taste, which is unartificial, not tempered, and which is not over- 20  
powered by any charms."

Similarly after the poison has been swallowed he should be watched for (an interval of) 500 claps of the hands, and thereafter should be examined, as says Nārada: "If after an interval of 500 claps of the hands he remains free from any effect (of the poison), then he is considered to be innocent; thereafter he should be 25  
examined". The interval of time however stated by Pitāmaha i. e. till the end of the day, has a reference to a small quantity of poison. "After swallowing it if he remains steady and without a swoon, and does not vomit and otherwise remains free from any effect till the end of the day, he should then be declared as innocent." Here also 30  
the procedure is as follows; the Chief Judge after having observed a fast and worshipped the God Mahādeva should place the poison before it, and after having offered a sacrifice to Dharma and other deities,

1. Verse, 450.

2. देहिनाम् Lit: corporate beings.

3. Oh. I 322.

and placed the document containing the complaint on the head of the person wishing to perform the ordeal, should address the poison and offer it to him who is seated with his face turned towards the South; the person performing the ordeal too should take the poison after addressing it.

Here ends the Ordeal by Poison.

Viramitrodaya.

Now the Author states the ordeal by Poison

Yājñavalkya, Verses 110, 111.

- 10 "O Poison &c.", with this verse having addressed the poison, one should eat. He, moreover, by whom it becomes digested without convulsions, of him the Chief Judge should declare the innocence. The *S'āraṅga* or ginger poison is well known as *siṅghia*, as has been said: "Having the luster of a goat's horn, blue in colour, and produced on the
- 15 Hīmalāya mountain, pure, having the luster of ginger, of a fine yellow colour, and unsurpassed."

"The transmigration of a humour of the body into another is known as the conclusion of poison." Its characteristic is, horripilation, swoon, &c. An ordeal of that.

- 20 The procedure here is this: The Chief Judge having observed a fast, and worshipped Mahādeva, and having placed before him the poison, having performed the worship of Dharma terminating with the sacrificial oblations, placing the document of declaration on the head of the performer of the ordeal should thus address the poison with this
- 25 *mantra*: "O poison, thou hast been created by Brāhman for testing the wicked; (therefore) expose the soul of the sinners, while he like ambrosia to the pure-minded. O poison, thou art Death incarnate, thou hast been created by Brāhman; free this man from this (charge of a) sin, and become nectar to him by (regard to his) truth." Thereafter to
- 30 the performer of the ordeal with his face turned towards the South, himself with face to the North or the East, in the presence of the Brāhmaṇas, he should give refined powdered poison mixed in clarified butter. By regard to particular seasons, particular proportions also have been mentioned in this connection by Nārada: "Having weighed
- 35 the poison which is intended (to be given), it should be administered at

n time when the winter has set in; not in the afternoon nor in the noon, nor even in the twilight, should one knowing the Dharma (administer it). In the rainy season, the measure is four yava, not five yavas have been stated to be in the Grishma; in the Hemanta, it is seven yavas, and in the Śarad, even less than that". 'Less', i.e. six yavas. 5.  
Thereafter, the performer of the ordeal having addressed with the verse "O poison, thou &c." should consume it. (110-111).

Here ends the Ordeal by Poison.

### Śūlapāṇi.

The Author states the ordeal by Poison.

Yājñavalkya, Verses 110, 111.

'Śarṅgam,' i.e., "Having the lustre of a goat's horn, blue, and produced on the Himālaya mountain, and in the effect having the lustre of ginger, extremely cooling and unsurpassed". Having taken in the hand such poison, and addressed with the verse "O poison, &c.", and consumed 15  
in the stated quantity, one in whose case it becomes digested without any convulsion, swoon, &c., that man shall be (declared to be) innocent. In some books, the following verse is stated as to be repeated (by him), "O poison thou art the son of Brāhman, established in the laws of truth; pray free me from this accusation, and by the (force of) truth be ambrosia 20  
to me." (110, 111).

Thus ends the Ordeal by Poison.

Now the Author describes the Ordeal by Kos'a

Yājñavalkya, Verse 112.

Having worshipped the stern deities, he should 25  
collect the water in which they were bathed. Then after reciting (the formula), he should make the person drink therefrom, three handfuls of water.

Mitākṣharā:—Ugrān Devān, stern deities, i. e. such as 30  
Durgā, Āditya &c; samabhyarchya, having worshipped, i. e. worshipped with the sandal-paste, flowers &c. and after having bathed tat snānodakmāharet, he should collect the water in which they were bathed. After collecting it, the chief Justice should address it with the mantra "Oh water, thou art the life of all sentient beings &c.", and putting that water into another vessel he should pāyayet 35

prastūtrayam, cause three handfuls of the water to be drunk, by the person performing the ordeal after the repetition of the mantra, "O Varuṇa protect me for the truth &c." This, moreover, should be done after the general procedure viz. the invocation of Dharma, the worshiping of all deities, the offering of the sacrifice, and the placing (on the head) of the document containing the complaint &c. has been observed.

Here also, the rule as to the deity to be bathed, the rule as to the procedure, as also the rule as to who is entitled to this ordeal have been stated by Pitāmaha thus: "Of that deity whose devotee he is, the water should be caused to be drunk by him. In the case of an equal regard for all the deities, the water of Āditya should be given to be drunk. The water of Durgā should be given for drinking to the thieves, as also to those who make a living upon their weapons. In the case of Durgā the trident should be bathed, while of Āditya, the circle should be bathed, so also the weapons of other Deities too should be bathed." This is the rule about the deities.

The rule as to the procedure is: "In cases of trust, in all cases of suspicion, and also in a compromise—i.e. these the *Koś'a* should be administered, always for the purification of the mind".

"The drinking of the *Koś'a* water is ordained in the forenoon for one who has observed a fast, has bathed, and

\* Page 71. has a wet cloth on, who is a believer, and who is free from vices." *Sasūka* is a believer. "The

wise should not offer the *Koś'a* to the drunkard, to the voluptuous as also to the rogues, and to those who are unbelievers'. The drinking of *Koś'a* should be avoided in the case of great criminals, irreligious or ungrateful men, eunuchs, low Brāhmaṇas, unbelievers, Vratyas and slaves." *Mahāparādha* means a great crime. *Irreligious i. e.* who does not observe the duties laid down for the Varnas in the several stages *i. e.* who is an atheist. *Louhborn i. e.* born of a Pratiloma union. *Slaves i. e.* fishermen. This is the rule as to the capacity of persons.

Moreover, after preparing a circle with the cow-dung, the person wishing to perform the ordeal should be seated facing the Sun, and



Yājñavalkya  
Verse 113.]

then he should be made to drink. This is the rule to be deduced from the text of Nârada: "Having called him who has been accused, and made him seated in the centre of a circle, and with his face towards the Sun, he should be made to drink three handfals."

It may be asked, in the case of ordeals begining with the balance and ending with the poison the decision as to the innocence or guilt is immediate, what however in the case of *koś'a*? so the Author says

Yājñavalkya, Verse 113.

He on whom no calamity falls either by the act of the King, or of God within fourteen days, is innocent (and) there is no doubt.

Mitākṣharā:—Chaturdas'ādannhaḥ, before fourteen days, *yasya*, on whom, *râjīkam*, by the act of the king, i. e. by reason of the king, (or) *daivīkam*, by the act of God, i. e. caused by God, *vyasanam*, calamity, i. e. trouble, *ghoram*, dire, i. e. great; no, is not, i. e. certainly never, *jâyate*, falls, a minor one being unavoidable in the case of corporate beings—*Sa s'uddhaḥ*, he should be considered to be innocent.

If it fall after the interval there is no blame. As says Nârada: "If a great misfortune even should befall him after the lapse of a fortnight, he must not be harassed by any one, since the fixed period has elapsed." This text is self-apparent. The rule 'within fourteen days' is with reference to serious charges, since it comes to be mentioned after the prefatory observation. "These in the case of serious charges?" The other intervals mentioned by Pitāmaha, have a reference to petty charges; *vide* the text: "The *koś'a* may be administered even in a petty case." These are (as mentioned in the text): "He in whose case a misfortune is seen

1. Oh. I 331.

2. See above yajn. Ver. 95 Text p. 57. l. 25. Eng. Tr. p. 909.

3. Of Pitāmaha.

within three, seven, twelve or fourteen days, is considered to be guilty." These three intervals of time have to be adjusted by dividing the amount at stake which is less than the amount of a serious charge, and by allotting the periods of three days &c. to each portion respectively.

Thus ends the Ordeal of *kośa*.

Viramitrodaya.

Now the Author states the ordeal of the *Kośa*

Yājñavalkya, Verses 112, 113.

10 Having offered worship to the stern Deities, the Chief Judge should take up the bath-water of the Deity. The sternness, moreover, has been expounded by Pitāmaha thus: "Of that Deity, whose devotee he is, the water of it should be caused to be drunk by him. In the case of an equal regard for all the deities, the water of Āditya should  
15 be caused to be drunk. In the case of Durgā, the trident should be bathed, while of Āditya, the circular halo; in the case of other deities, the weapons should be bathed".

*Tasmāt*, 'from it', i. e. from the bath-water, *prasṣtitrayam*, 'three handfuls' of water having made to trickle, he should be made  
20 to drink. Of one who has drunk the water no calamity from the king or fate, or any other difficulty such as a dangerous disease of a malignant type for an interval of fourteen days, *sa śuddhaḥ*, 'he is declared innocent' i. e. becomes successful. The meaning is that on an absence of a calamity within the time limit, no suspicion can stand.  
25 By the use of the word *tu*, 'however', is excluded the mixture of any other water. "He, in whose case a misfortune is seen within three nights, or seven nights, or twelve days, is declared to be guilty," this text of Pitāmaha has reference to occasions of a faulty or very faulty character; thus there is no contradiction.

30 Here, moreover, this is the Procedure: Having prepared a circle with the cow-dung, and having placed the performer of the ordeal with his face towards the Sun, and performing the ritual ending with the placing of the document on the head, and after offering worship to the stern deity, —from their bath-water taking three handfuls of water and having

1. संशयः. This is the reading in Viramitrodaya. The *Mitākṣharā* reads संशयः.

addressed, it: "O Water thou art.....of the sentient beings &c.".....  
"O Varuṇa, protect me, by truth", he (the Chief Judge) should cause  
the performer of the ordeal to drink. (112-113).

Thus ends the ordeal of Kōśa.

### S'ûlapāṇi.

Now the Author states the ordeal of kōśa

Yājñavalkya, Verse 112.

Having respectfully offered worship to stern deities, and having brought their bath-water, and after repeating the offence charged against himself, with face turned towards them, he should take three handfulls of the water. Pitāmaha states a special rule: "Of that deity of whom the particular man is a devotee, he should be made to drink the water. In the absence of any particular deity, he should be made to drink the water of Aditya. Within fourteen days' interval if no dire calamity from the king or fate occur to him, he should be declared to be innocent without doubt." 'Calamity,' i.e. an accident. 'Dire,' i.e. causing extreme pain. The rest is plain. Pitāmaha: "If within three nights, or within seven nights, or within twice seven days, any misfortune is seen to occur to a man, such a one is a sinner." Kātyāyana<sup>1</sup>: "If a calamity due to fate occurs within three weeks, the accused should be compelled to pay the amount, and also a fine. Not of himself only, but if it occurs to his relatives, such as a disease, fire, death of a kinsman, he should be compelled to pay the amount and a penalty. A wasting disease, diarrhoea, eruptions, pain in the palate and joints, eye disease, throat disease, and the colic pains are regarded as divine calamities for men."

Thus ends the ordeal by Kōśa.

### OTHER ORDEALS.

The five principal ordeals beginning with the Balance and ending with the Kōśa, have been expounded as proposed by the Lord of the Yogis.

Other ordeals have been mentioned in another Smṛti having a reference to petty complaints, as says Pitāmaha<sup>2</sup>: "Now I proclaim the rule regarding the grains of rice which have to be

chewed (by the party). This rice ordeal should be administered in

1. Verses 456-458.

2. cf. Also Nārada Ch. I. 337-342.

- cases of larceny, but on no other occasion whatsoever ; this is certain. Let the judge who must have cleansed himself previously, use white grains of rice, and not of any other (corn), and let him place the same in an earthen vessel in the sight of the Sun. After having
- 5 mixed them with water used for the bath (of the image of the Sun), he shall cause it to remain there. (In the next morning) one who has observed a fast and has bathed, on whose head the document containing the complaint has been placed, and who is seated facing towards the East, should be asked to chew the rice-grains and then
- 10 to spit (the same) on a leaf of the holy fig tree and of none else, and when that is not available then on a leaf of a birch tree. He whose blood issues forth, or whose chin or palate becomes rotten, or the limbs shake, must be pronounced guilty. "

- The Chief Judge should cause one on whose head the
- 15 document containing the complaint has been placed to chew the rice grains and to spit.

The form "having caused to chew" is gerundial. The general procedure which is common to all ordeals viz. the invocation of Dharma &c. should be followed here also.

- 20 Thus ends the Ordeal of Rice.

- The ordeal of the heated *Māṣa* has been described by Pitāmaha thus: "A circular pot measuring
- Heated *Māṣa* sixteen *āṅgulas* with a depth of four *āṅgulas* should be made either of gold, silver, copper, or
- 25 of earth, of circular size. And the same should be filled with clarified butter or oil weighing twenty *palas*, and then when this is heated well, a gold *māṣa* should be thrown into it. He (i. e. the person performing the ordeal) should raise the heated *māṣa* by means of the forefinger and one or two fingers near it. He who
- 30 does not shake his fingers, or on whom no boil is produced, is deemed under the law to be innocent since his hand and fingers were unaffected. By the expression "should raise" is meant simply picking up from the vessel and not "throwing out".

addressed it: "O Water thou art.....of the sentient beings &c.".....  
"O Ya-nṛga, protect me, by truth", he (the Chief Judge) should cause  
the performer of the ordeal to drink. (112-113).

Thus ends the ordeal of Kāśa.

### Sūlapāṇi.

Now the Author states the ordeal of Kāśa

#### Yājñavalkya. Verse 112.

Having respectfully offered worship to stereo deities, and having  
brought their bath-water, and after repeating the offence charged against  
himself, with face turned towards them, he should take three handfulls of  
the water. Pitāmaha states a special rule: "Of that deity of whom the  
particular man is a devotee, he should be made to drink the water. In  
the absence of any particular deity, he should be made to drink the water  
of Aditya. Within fourteen days' interval if no dire calamity from the  
king or fate occur to him, he should be declared to be innocent without  
doubt" 'Calamity,' i.e. an accident. 'Dire,' i.e. causing extreme pain. The  
test is plain Pitāmaha: "If within three nights, or within seven  
nights, or within twice seven days, any misfortune is seen to occur  
to a man, such a one is a sinner." Kātyāyana: "If a calamity due to  
fate occurs within three weeks, the accused should be compelled to pay  
the amount, and also a fine. Not of himself only, but if it occurs to his  
relatives, such as a disease, fire, death of a kinsman, he should be  
compelled to pay the amount and a penalty. A wasting disease,  
diarrhoea, eruptions, pain in the palate and joints, eye disease, throat  
disease, and the colic pains are regarded as divine calamities for men." 25

Thus ends the ordeal by Kosha

### OTHER ORDEALS.

The five principal ordeals beginning with the Balance and  
ending with the Kosha, have been expounded, as proposed by the Lord  
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Other ordeals have been mentioned in another Smṛti having  
no reference to petty complaints, as says  
Pitāmaha<sup>2</sup>: "Now I proclaim the rule  
regarding the grains of rice which have to be  
chewed (by the party). This rice ordeal should be administered in

Rice.

1. Verses 456-458.

2. of Also Nārada Ch. I. 337-342.

cases of larceny, but on no other occasion whatsoever ; this is certain. Let the judge who must have cleansed himself previously, use white grains of rice, and not of any other (corn), and let him place the same in an earthen vessel in the sight of the Sun. After having  
 5 mixed them with water used for the bath (of the image of the Sun), he shall cause it to remain there. (In the next morning) one who has observed a fast and has bathed, on whose head the document containing the complaint has been placed, and who is seated facing towards the East, should be asked to chew the rice-grains and then  
 10 to spit (the same) on a leaf of the holy fig tree and of none else, and when that is not available then on a leaf of a birch tree. He whose blood issues forth, or whose chin or palate becomes rotten, or the limbs shake, must be pronounced guilty."

The Chief Judge should cause one on whose head the  
 15 document containing the complaint has been placed to chew the rice grains and to spit.

The form "having caused to chew" is gerundial. The general procedure which is common to all ordeals viz. the invocation of Dharma &c. should be followed here also.

20 Thus ends the Ordeal of Rice.

The ordeal of the heated *Māṣa* has been described by Pitāmaha thus: "A circular pot measuring  
 Heated *Māṣa* sixteen angulas with a depth of four angulas  
 should be made either of gold, silver, copper, or  
 25 of earth, of circular size. And the same should be filled with clarified butter or oil weighing twenty palas, and then when this is heated well, a gold *māṣa* should be thrown into it. He (i. e. the person performing the ordeal) should raise the heated *māṣa* by means of the forefinger and one or two fingers near it. He who  
 30 does not shake his fingers, or on whom no boil is produced, is deemed under the law to be innocent since his hand and fingers were unaffected. By the expression "should raise" is meant simply picking up from the vessel and not "throwing out".

Page 72.

Another process:—"The Judge after having cleansed himself, should throw clarified butter of the cow into a golden, silver, copper, iron, or earthen vessel, and should heat the same on fire. He shall then throw into it a polished coin bearing an impression and made either of gold, silver, copper, or iron. The pot (which has been heated to boiling) in which waves and circles are rolling and rising up, and which is incapable of being touched even at the nail-points (of the fingers,) he should test it by means of a green leaf (being dipped into it) and thus producing a crisping<sup>1</sup> sound. And then he should address it by the following *mantra* viz: "O clarified butter thou art the purest of all things, thou art the ambrosia at a sacrifice. Burn this man, O purifier, if he is guilty, and be as cold as ice if he is innocent." He should cause the coin lying in the clarified butter to be caught by the person (wishing to perform the ordeal) who has observed a fast, and who has then bathed and has wet clothes on. The umpires should then examine his forefinger. He on whom no boils are seen is to be considered innocent, otherwise he is guilty". Here also should he observed the ceremony of invoking the Dharma &c. The address to the clarified butter is to be by the Chief judge; the *mantra* to be addressed by the performer of the ordeal is "O fire thou art of all sentient beings &c.". From the text "they should examine the forefinger," the picking up of the coin is to be made by the forefinger only.

Thus ends the Ordeal of the heated Māṣha.

The ordeals of the Dharma and Adharma have been mentioned by Pitāmaha thus: "Now I shall describe the test by Dharma and Adharma in the case of men who are guilty of assault, who are pressed for payment, and those who desire to perform the expiatory ceremony." Guilty of assault i. e. in charges of assault. Who are pressed for payment i. e. in money claims. Who desire to perform an expiatory ceremony i. e. in

1. चुरकार is the particular sound which is produced at the combination of fire and water c/o the Marathi चुर.

Yājñavalkya  
Ordeals ]

a Brāhmaṇa to be sworn by his veracity, a Kṣatriya by his chariot or the animal he rides on and by his weapons, a Vaiśya by his kine, grain and gold, and a Śūdra by (the imprecation of) all the heinous sins "

Here, moreover, the index of the innocence has been given by **Manu**<sup>1</sup>—viz "He who meets with no speedy misfortune, must be held innocent on (the strength of) his oath" The misfortune also has been stated above in the text<sup>2</sup> 'On whom no calamity falls either by the act of God or that of the king' The rule as to the duration of time also should be observed to be to commence from one night and to extend to three nights, commencing from the third night and extending as far as the fifth night, or of one night &c, after determining the importance or pettiness of the case in hand The penalty also has been mentioned by Kātyāyana<sup>3</sup> when thus the success or defeat of a party has been determined by means of ordeals, 'The innocent should be caused to be paid half of a hundred and the guilty becomes liable to punishment' He<sup>4</sup> mentions the penalty "In the case of the ordeal of poison water, fire, balance, *kośa*, and rice, as also in the ordeal of the heated *māṣa* the penalty should be determined respectively as follows —viz one thousand, six hundred, and five hundred, four, three, two, and one hundred, respectively, the lesser form to be selected in the case of pettier offences" By reason of the text<sup>5</sup>—"When upon a denial, a claim is proved he should pay (the amount)" &c in which a penalty has been mentioned, this penalty under the (law of) ordeals comes to be an addition (to it)

Thus ends the chapter on *Ordeals*

### Viramitrodaya

Now in the case of petty accusations, the four ordeals each as the Rice and the rest, not particularly stated by the Author of the Work, are being stated. Thus Pitāmaha (same as on p 971 lines 34-35 and p 972 ll 1-13 lines above) Here moreover, the invocation

1 Ca VIII 115

2 Verse 409

3 Yaj II 11 see above p 690 ll 73-74

2 Yaj II 113 See p 969 above

4 Kātyāyana Verses 460, 461



of the Dharma and the other procedure should be understood to be for the three (ordeals) which will be stated hereafter. Moreover, "A pot made either of gold, or of silver, or of copper, or even of earth, with a depth of four angulas and measuring sixteen angulas and  
5 of a circular shape, he should fill with clarified butter and oil weighing twenty *palas*, and after it is boiled to a heat, a gold *māṣa*, should be thrown into it. He should take out the heated *māṣa* by joining the thumb and a finger. He who does not shake the forefront of his head or on whom no eruption has been produced,  
10 is deemed under the law to be innocent, since his hand and the fingers were unaffected." *Maṇḍalam*, i.e. a circle; *uddharet*, 'take out', i.e. take outside (the pot).

Bṛhaspati: "Iron twelve *palas* in weight formed into shape is called a plough-share; it should be eight *angulas* in length and four  
15 *angulas* in breadth. That (plough share) having been made red-hot in fire, the thief should lick it once with his tongue. If he remains unscorched, he obtains an acquittal; otherwise, however, he loses his cause."

Pitāmaha describes the ordeal of Dharma (see above p. 973  
20 ll. 27-33 and p. 974 ll. 1-22).

Now the Oaths. There *Manu*: "A Judge should swear a Brāhmaṇa by the truth; a Kṣatriya by his vehicle and weapons; a  
Vaiśya by the kloss, seeds and gold; while a Śūdra with all the sins; or these should be made to touch the heads of their sons and wives."

25 "Should this have been committed by me, then the sin generated by the transgression of truth should be mine", thus a Brāhmaṇa should be made to say. "Should this harm have been done by me then my conveyances and arms may become unfruitful", thus should a Kṣatriya be made to declare; and so on further.

30 Halāyudha states the meaning of this text in substance to be thus: "This is true," thus a Brāhmaṇa should be made to affirm; a Kṣatriya should be made to touch the conveyance and weapons; a Vaiśya should be made to touch the cow &c. and the sin which is  
35 falsifying an oath. All should be made to do as stated before".

Bṛhaspati: "Truth, a vehicle, weapons, cows, seed, and gold; the feet of the Gods or of the Brāhmaṇas, the heads of sons or wives; these

1. Ch. X. 28, 29.

2. Ch. VIII. 114, 115.

3. Ch. X, 6, 7.

are stated to be for oaths by Mann in small matters". Here, as an oath is distinct from an ordeal, there is no fasting &c., but only bathing and sipping water.

S'ankha: "The staking of the merit generated by pious and charitable deeds &c., and should also cause other oaths to be taken." 5

Mann: "One falsifying an oath perishes here and after death. In connection with amorous women, in regard to marriages, in the feeding of cows, as also regarding fuel, and for protecting a Brāhmaṇa, by taking a false oath, there is no sin". 'In connection with amorous women' i. e. in private, for keeping the woman pleased. 10  
'In marriage' i. e. by women for the husband. For the feeding of the Cows, fuel, for the performance of the daily oblation; also for the saving of the life of a Brāhmaṇa, a cow &c., even by a false oath, no sin is incurred. This is the meaning.

Here in the Commentary on Śrīmat Yājñavalkya  
ends the Chapter on Ordeals 15

### S'ūlapāṇi.

In the course of the discussion are mentioned the Rico, &c. Here Pitāmaha: "In the case of theft the rice should be administered, and not elsewhere; this is certain. Pure rice should be administered, and not 20  
from paddy grains and not of any other. In an earthen pot one should place it in front of Aditya, after having purified oneself. These should be mixed with the bath water; at night he should be made to stay there. In the early dawn, it should be given to the performer, with his face towards the Sun. After chewing the rice he should be made to emit on a leaf three 25  
times. He whose blood appears to nose, or the tooth-row is affected with pain; one whose limb gets a shake, such a one the Judge should declare as not innocent."

Now the ordeal of the Heated Māṣa.

One should cause to be made an iron vessel, or one of copper of 30  
sixteen *angulas*, and of four *angulas* (in depth) or of earth either, of n circular shape; and should fill it with clarified butter and nil of the quantity of twenty *palas*; when it is well hotted, one should throw a gold

1. *पूजितं*—Pious and charitable deeds such as performing sacrifices, digging tanks, etc. see p. 806. n. 2 above.

2. Ch. VIII. 112, 113

*māṣa* in it. He should take out the heated *māṣa* with the fore-finger and another finger joined together. Where neither the forepart of the hand is burnt, nor a boil appears, such a one is regarded as innocent according to law, as is the text of *Pitāmaha*. *Maṇḍala*, 'a circle'.

- 5 Now the ordeal of the Plough share—*Phāla* (same as in the *Viramitrodaya* at p. 976, above).

Now the ordeal about *Dharmaja*—Result of *Dharma*.

- There *Bṛhaspati*<sup>1</sup>: "On the leaves should be painted (the images of) *Dharma* and *Adharama* in black and white colour, (respectively). Then they should be invoked with the *Mantras* inducing vitality and others, as also with the *Gāyatri* and *Samas*. Thereafter one should offer worship with sandal paste, and flowers, also white and dark. Having sprinkled with the five bovine products, and enclosed in balls made of earth, having made (them) equal in size, these should be placed unobserved in a new jar. Thereafter the performer of the ordeal should take one ball out of the vessel when asked (by the Judge). If *Dharma* is taken, he is acquitted; otherwise he is declared guilty".

Thus ends the ordeal of *Dharmaja*.

- 20 Now the Oaths; *Nārada*<sup>2</sup>: "Truth, the conveyances and weapons, cows, seeds and gold, the feet of the Deities and of the *Brāhmanas*; and meritorious acts as may have been performed. These have been stated as (the objects for) oaths by *Manu* in small matters".

- Also *Manu*<sup>3</sup>: "By the truth should a *Brāhmana* be affirmed; a *Kṣatriya*, by the conveyances and weapons; with the cows, seeds, and gold, a *Vaiśya*; while a *Sūdra* with (the imprecation of) all the sins". (113)

Thus ends the Chapter on Ordeals.

1. Ch. X. 30-34.

2. This is not found in *Nārada*. But see *Bṛhaspati* X. 67.

3. Ch. VIII. 173.

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